Comments Received on draft Ventura County MS4 Permit
December 27, 2006

From: Andrew R. Henderson, General Counsel Building Industry Legal Defense Foundation

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To: RWQCB-LA

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Ladies and Gentlemen:

The Building Industry Legal Defense Foundation ("BILD") and the Building Industry Association of Southern California/Great Los Angeles Ventura Chapter ("GLAV") hereby respectfully submit their comments on the proposed MS4 Permit for Ventura County permittees dated December 27, 2006 (hereinafter, the "Proposed Permit").

The Building Industry Legal Defense Foundation (BILD) is a non-profit mutual benefit corporation and wholly-controlled affiliate of the Building Industry Association of Southern California (BIA/SC). BIA/SC is a nonprofit trade association representing more than 2,050 member companies with more than 200,000 employees. The mission of BIA/SC is to promote and protect the building industry to ensure its members' success in providing homes for all Southern Californians. BILD's purposes are to monitor legal developments and to improve the business climate for the construction industry in Southern California. BILD's mission is to defend the legal rights of current and prospective home and property owners, and to accomplish this mission BILD participates in and supports litigation necessary for the protection of such rights. BILD promotes and supports important legal cases to secure favorable court decisions for private property owners and developers. BILD focuses on litigation and regulatory matters with a regional or statewide significance to its mission.

The Building Industry Association of Southern California/Great Los Angeles Ventura Chapter (GLAV) is comprised of approximately 500 companies involved in every aspect of building and providing homes in Ventura County and most of Los Angeles County. GLAV exists to provide leadership on public policy issues that promote building quality communities for the region's growing population, to increase the public appreciation of the importance of housing and those who provide it, and to facilitate improved business opportunities for its members. BIA/GLAV is committed to increasing homeownership opportunities for the current and future residents of our region. To reach this goal, GLAV works alongside elected officials, regulators, community leaders and organizations to come up with credible solutions to the housing crisis.

BILD and GLAV are extremely concerned about the terms and conditions set forth in the Proposed Permit. Admittedly, the Proposed Permit reflects the Regional Board staffs' earnest attempt to make progress in the area of water quality from existing and future development. Viewed in light of the Regional Board's

staffs' motives, BILD and GLAV do not contest many of the water quality "ends" that the Proposed Permit seeks to achieve.

That said, the Proposed Permit seeks to achieve certain water quality "ends" by employing various "means" (permit conditions and terms) that are plainly indefensible. We therefore object to the Proposed Permit on a number of legal grounds.

The chart attached to this letter, and the materials and documents referenced therein, set forth for the Board and its staff our many, detailed comments about specific provisions of the Proposed Permit. Through the chart, we have tried to set forth our concerns succinctly and in a form that will allow the Board and its staff to consider our specific concerns individually. Where possible, we have also tried to identify and recommend more appropriate "means" for achieving the laudable water quality "ends" intended.

There are, however, many constants in our concerns regarding the Proposed Permit. First and foremost, the Proposed Permit reflects a pervasive failure on the part of the Regional Board's staff to properly exercise its discretion in developing waste discharge requirements (WDRs) and permit requirements to control urban runoff to the maximum extent practicable (MEP) as required by federal law. Pursuant to state and federal law and policy, the Regional Board has broad discretion to determine WDRs and permit requirements necessary to control runoff water quality to the MEP. As we are informed by the California Supreme Court's opinion in *City of Burbank v. State Water Resources Control Board*, 35 Cal.4th 613 (2005), the Board is "free to enforce [California] water quality laws [including application of the Porter-Cologne balancing factors] so long as its effluent limitations are not 'less stringent' than those set out in the Clean Water Act." *Id.* at 620. Here, the Regional Board enjoys broad discretion under section 402(p)(3) of the Clean Water Act, which allows the permitting to impose whatever controls that it (i.e., the permitting agency) deems practicable. *See, e.g., Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1165-67 (9th Cir. 1999). Therefore, even if one were to assume that the Regional Board's issuance of the instant MS4 permit is entitled to the utmost judicial deference, the Regional Board's broad discretion is constrained and must assure that the Regional Board's action is not arbitrary, capricious, lacking in evidentiary support, or unlawful or procedurally unfair. *See Western States Petroleum Association v. Superior Court (Air Resources Board)*, 9 Cal.4th 559, 574 (1995). Accordingly, despite the deference that the Board enjoys, it must (1) exercise its discretion in the manner dictated by state and federal law and policy, in order to (2) fashion pollution control requirements in the instant Permit that are appropriately supported by substantial evidence, and they must (3) describe the relationship between the permit requirements and available evidence and information, providing the regulated community with a reasonable "analytical roadmap" explaining the requirements chosen.

The Proposed Permit fails to accomplish any of the three requirements. Most importantly, the requirements of the Proposed Permit clearly indicate that the Regional Board has failed to exercise its discretion in developing those requirements as required by state and federal law and policy. As described in the attached chart, applicable case law, Porter-Cologne and the federal Clean Water Act (including EPA's delegation of permitting and enforcement authority to the State of California), require that in exercising discretion to determine permit requirements necessary to achieve MEP, Regional Boards must evaluate, consider and reconcile proposed permit requirements in light several factors. The factors that most prominently must be addressed are set forth in California Water Code Section 13241. Those factors (the "Section 13241 Factors"), which the Board's staff expressly stated in the Proposed Permit were not taken into account in developing Proposed Permit requirements, are:

(a) Past, present, and probable future beneficial uses of water.

(b) Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto.

(c) Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area.

(d) Economic considerations.

(e) The need for developing housing within the region.

(f) The need to develop and use recycled water.

In addition to these requirements, as described more fully in the attached chart, State Board guidance mandates consideration of a number of additional factors in determining whether permit requirements achieve the MEP standard. These additional requirements (the "State Board Factors") include:

1. Effectiveness: will [permit requirements] address a pollutant of concern?
2. Public Acceptance: [Do permit requirements] have public support?
3. Cost: Will the cost of implementing the [permit requirements] have a reasonable relationship to the pollution control benefits to be achieved?
4. Technical Feasibility: [Are permit requirements] technically feasible considering soils, geography, water resources, etc.

If the State Board Factors and the Section 13241 Factors (collectively, the "Balancing Factors") are properly considered when the Regional Board exercises its discretion to adopt municipal storm drain permits, the resulting permit requirements will be properly designed to implement MEP and comply with federal water quality mandates. When discretion is not properly exercised, and the Balancing Factors are ignored, improper permit conditions result.

Where possible, we have attempted to reflect within the chart and referenced materials the specific Balancing Factors that the Regional Board failed to evaluate in preparing provisions in the Proposed Permit. We have also tried to otherwise indicate where the Proposed Permit reflects requirements that are arbitrary, capricious, lacking in evidentiary support, are in derogation of legislative objectives, and the like. However, given the wholesale failure to evaluate Proposed Permit requirements in the context of the Balancing Factors as required by law and as a matter of good policymaking, the Board should consider these issues to be virtually global in scope – applicable to every permit condition imposed. An application of appropriate science considered in light of the Balancing Factors will lead the Board to make substantial revisions to the Proposed Permit.

In addition to the various legal considerations reflected in the attached chart, BILD and GLAV are very concerned about the Proposed Permit as a ***policy vehicle*** as well. For example, we see the Proposed Permit as untenable on a number of policy and scientific grounds:

1. The proposed permit incentivizes sprawl and discourages infill development, redevelopment and smart growth, which constitute the development preferences embraced by Ventura voters, elected officials, and policy makers. The terms of the Proposed Permit would:

- Apply 'one-size-fits all' hydromodification control standards (which are not derived from and in some cases are contrary to approaches recommended in the scientific literature) to all Development and Redevelopment projects, regardless of project size, location within a watershed, impervious nature of a watershed, in-stream conditions, and susceptibility of receiving waters to destabilization;
- Regulate super-small infill development (< 1 acre) which will be unregulated outside the urbanized areas, pushing such developments out of the city core;
- Focus low impact development (LID) principles and other hydromodification controls on an undue "lot-by-lot" scale, rather than on a regional, sub-regional or community level. Such requirements, applied to infill and redevelopment projects and are infeasible to implement, as these projects tend to be smaller in scale and constrained in available land;
- Mandate hydromodification controls on infill properties where heroic and expensive efforts will be wasted in relation to larger urban watersheds;
- Exhibit a bias against implementation of regional volume reduction and treatment BMPs; and
- As a result of the foregoing, greatly compound the regulation of infill, creating economically and technically infeasible requirements, particularly for land constrained project areas. These constraints will create incentives for cities and developers to utilize greenfield lands to meet their housing and development needs, where stormwater treatment and hydromodification controls can be more easily constructed.

2. The Proposed Permit won't actually improve water quality in Ventura County because it relies on ineffective strategies and bad science.

- The Proposed Permit reflects a "one size fits all' mentality – prescribing requirements where they don't make sense. For example, in derogation of the Water Code Section 13241(b) admonition to consider and reconcile "environmental characteristics of the hydrographic unit under consideration," the Proposed Permit reflects numerous mandates made county-wide, without regard to differences in hydrographic units within the County. Similarly, the Proposed Permit is substantially based on science developed in different climatic regions where, for example, infiltration makes sense, but not for Southern California climatic conditions.
- There is no showing that lot-by-lot application of the five recommended hydromodification standards are necessary to assure water quality benefits.
- The data used to establish Municipal Action Limits (MAL) are neither current nor representative of Ventura County. Furthermore, it is scientifically inappropriate to use 50% median value for a MAL rather than utilize an upset value. The Proposed Permit provisions regarding measurement of MALs also fail to comport with science and good sense (receiving water monitoring data is determined to be appropriate for determining discharge water quality conditions, *and* vice versa). Finally, contrary to scientific recommendations and State Board policy, the Proposed Permit provisions require implementation of the MALs as numeric effluent limits, rather than as action levels designed to identify discharge issues and trigger source investigation and iterative BMP improvements.
- There is no rational climatic reason to restrict grading 6-1/2 months/year, and the restriction is overly broad in light of the incremental water quality that can be achieved, given the requirements of the State General Construction NPDES Permit.

- The Proposed Permit inappropriately combines a variety of stormwater control techniques which are duplicative and are likely conflict with each other, and does not appropriately reflect the different roles and purposes of MALs, RWLs, and WLAs. In fact, the permit reflects confusion between these terms and how to monitor for such standards.

3. The Proposed Permit will unnecessarily harm Ventura County economically and will further exacerbate the housing crisis in the County. Again, because the "section 13241 balancing factors" have not been considered, the Proposed Permit imposes irrational requirements.

- There is no logical rationale for precluding grading for 6-1/2 months of a year. According to the Proposed Permit, the supposed "wet" season in Ventura County is longer than the "dry" season, which is clearly not the climatic pattern anywhere in Southern California including Ventura County. In fact, during the supposed "wet" season, it typically rains on fewer that 25 actual days, but grading would be precluded for 6-1/2 months, imposing significant land carry costs, to achieve the incremental water quality improvements (above those already achieved by proper compliance with the General Construction Permit) for those 25 days.
- These grading restrictions will unnecessarily eliminate construction sector employment for 6-1/2 months of each year, resulting in significant economic effects in Ventura County, and greatly constraining the production of necessary housing. Workers and equipment will be unnecessarily idled, and the supply of housing will be further constrained.
- Industrial and commercial properties will also need to meet stringent construction requirements, which will limit their ability to grow and expand their businesses. Such businesses will likely consider expansion outside of Ventura County simply due to costs associated with construction.
- There appears to be no grandfathering for existing and entitled projects, which would be in derogation of other state land use and planning laws.

4. The permit conditions are not federally mandated and therefore constitute unfunded mandates:

- Again, the Regional Board failed to properly exercise its discretion by evaluating the Proposed Permit conditions in light of the Balancing Factors, which leads to permit requirements that are not consistent with a proper interpretation of MEP, and result in uncritical and excessive mandates on permittees;
- Contrary to federal and state water quality laws and regulations, and in derogation of separation of powers principles, the proposed conditions are overly prescriptive – telling the cities how to do their jobs, rather than allowing them to employ discretion afforded them in the Clean Water Act and Porter-Cologne to determine which Best Management Practices should be implemented to reduce pollution to the Maximum Extent Practicable.
- Contrary to State Water Board policy, EPA Phase II regulations, EPA guidance, and expert scientific recommendations, the Proposed Permit establishes new numeric thresholds for violations (e.g., two exceedances of Municipal Action Limits).
- Contrary to State Water Board policy, EPA Phase II regulations, EPA guidance, and expert scientific recommendations, the Proposed Permit establishes "zero" limits, even where natural baseline conditions cannot possibly meet such limits.

The attached chart, and the documents attached to and referenced therein, set forth in detail the many ways in which the Proposed Permit reflects proposed terms, conditions and requirements that are inappropriate legally, scientifically, and/or as a matter of good policy. The enclosed materials also indicate support for alternative terms, conditions and requirements that will achieve the Regional Board's laudable water quality goals in an appropriate and effective way. BILD and GLAV therefore respectfully request the Board to consider this information carefully, as well as the input from learned scientists and others, and revise the Permit substantially before finalizing it.

Respectfully,

Andrew R. Henderson
General Counsel
Building Industry Legal Defense Foundation

Holly Schroeder
Chief Executive Officer
Building Industry Association of Southern California –
Greater Los Angeles Ventura Chapter

Attachment (chart)

Building Industry Legal Defense Foundation
Building Industry Association of Greater Los Angeles and Ventura Counties
Major Issues and Comments on the
12/27/06 Draft NPDES MS4 Permit for
Ventura County, Ventura Watershed Protection District, and Incorporated Cities

The following are the preliminary comments of the above-referenced parties on the 12/27/06 Draft NPDES MS4 Permit for Ventura County, Ventura Watershed Protection District, and Incorporated Cities (the "Draft Permit"). Given the process for comment, and status of the Draft Permit reviewed, please consider these comments preliminary. The submitting parties intend to participate fully in the public process for adoption of a renewed MS4 Permit, and therefore must reserve the right to submit additional comments and information for inclusion in the administrative record, and for consideration by Los Angeles Regional Board staff and board members as the process for preparation and adoption of the subject MS4 Permit proceeds. All documents, attachments, comments memoranda and other materials referenced or cited in this document are hereby incorporated by reference into these comments. Capitalized terms and acronyms used herein and not otherwise defined have the meaning ascribed to them in the Draft Permit.

General Issues	Specific Requirements/Concerns	Comments
1. Improper Regulation of Discharges "Into" Storm Drain Systems	The Draft Permit provides that "Discharges *into* and from the MS4 in a manner causing or contributing to a condition of pollution, contamination or nuisance…are prohibited." *Draft Permit,* I.A.1., p. 25. "Discharges *to* the MS4 not covered by an NPDES individual or general permit are prohibited." • This provision as written shifts to co-permittees liability for pollution that may enter their MS4s as a result of unauthorized, or unknowing and even *intentional* discharges (such as	• **Comment:** The federal Clean Water Act (CWA) and the regulations adopted thereunder require that MS4 operators must adopt means, measures and methods to control discharges into storm drains that may cause pollution (illicit discharges, non-stormwater discharges and other discharges that may be significant contributors of pollutants); but the CWA and federal regulations do *not* contemplate that co-permittees would be liable for discharges into storm drains that could cause pollution if the methods, means and measures adopted by MS4 operators are ineffective in any particular instance to control such a discharge. *See* 33 U.S.C. § 1342; 40 CFR 122.26; 40 CFR 122.34. As a result, the appropriate approach for the *Draft Permit* to take would be to mandate that co-permittees adopt means, methods and measures to control

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	industrial discharges, sewage discharges, residential hazardous materials spills, nursery and farming discharges, and discharges of pollutants from upstream MS4 systems), even if the MS4 operator has properly adopted control measures, ordinances and programs to control and prevent these types of illicit discharges in accordance with the federal Clean Water Act and regulations thereunder. While the Clean Water Act mandates that MS4 operators shall adopt means, methods and measures to identify and control illicit discharges that would introduce pollutants into an MS4 system, it does not contemplate that, as set forth in the proposed provision, if such discharges occur they would constitute the basis for co-permittees liability for failure to comply with the Permit. • A requirement to prohibit all discharges into the MS4 that could cause or contribute to pollution or nuisance precludes the development and implementation of any subregional	improper discharges into the MS4 system, and require investigation and follow up to control improper discharges if they occur. The *Draft Permit* should not, however, create a prohibition against discharges into the MS4, and in turn, a violation by the co-permittees if those discharges occur, because the discharges are not in the immediate control of the MS4 operator. • **Comment:** State Water Resources Control Board ("State Board" or "SWRCB") Order 2001-15 found the exact language used in *Draft Permit* § I.A.1. invalid and overly broad because it regulates discharges "into" MS4s, when the federal Clean Water Act and Porter Cologne regulate discharges of waste and pollutants *from* MS4s to receiving waters. SWRCB Order 2001-15 at p. 10. Regional Water Quality Control Boards ("Regional Board") can emphasize control of discharges into the MS4 to improve the quality of discharges from MS4s, and can emphasize that dischargers into MS4s continue to be required to implement a full range of BMPs. However, MS4 permit prohibitions may not broadly restrict all discharges *into* an MS4, in part because that approach does not allow flexibility to use regional solutions where they could be applied in a manner that fully protects receiving waters. *Id.*

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	treatment and/or volume reduction BMPs that would be deployed downstream of the first catch basin, but prior to discharge into a receiving water.	
2. Cal. Water Code § 13241 Balancing	The Regional Board's position is that, under *City of Burbank,* they may not consider the substantial costs of compliance with the *Draft Permit*, and may not otherwise balance the factors listed under Water Code § 13241 in adopting the *Draft Permit* because, although the requirements of the *Draft Permit* are more "explicit or may be more specific than those enumerated in federal regulations," per the Regional Board they are tailored and "prescribed to be consistent with the [federal Clean Water Act]" and are simply the measures "necessary to reduce the discharges of pollutant to the maximum extent practicable *and* to meet water quality standards." *Draft Permit*, Finding F.6, p. 22.	• **Comment: 13241 Balancing is the Method for Exercising Discretion to Determine MEP.** In May 1973, the United States Environmental Protection Agency ("EPA") delegated responsibility for enforcing the CWA, including issuing NPDES permits, to the State and Regional Boards. California's Porter-Cologne Act (Calif. Water Code sections 13000 *et seq.*) is the statutory framework that sets forth the obligations of the Board when setting permit conditions for the protection of water quality. In delegating responsibility for CWA enforcement and permitting, EPA expressly embraced the Porter-Cologne legislative scheme and statutory framework as adequate to protect the waters of the United States under the federal Clean Water Act. 54 Fed.Reg. 40664 (Oct. 3, 1989); *Waterkeepers Northern California v. State Water Resources Control Board*, 102 Cal. App. 4th 1448, 1452; Cal. Water Code § 13370 et *seq*. • When the federal government delegated enforcement and permitting powers under the CWA to the State and Regional Boards, EPA consented to and embraced the *entire* statutory scheme under the Porter-Cologne Water Quality

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		Control Act ("Porter-Cologne"), including Cal. Water Code Sections **13241**[1] **and 13263**.[2] The plain language of Sections 13241 and 13263 require that when a Regional Board considers waste discharge requirements (WDRs) and permit conditions, it must consider all of the factors described in Section 13241, including costs of compliance with those WDRs and permit conditions. *City of Burbank v. State Water Resources Control Board*, 26 Cal. Rptr. 3d 304, 35 Cal. 4th 613, 625 (2005). These statutes were adopted and in place at the time that EPA approved State delegation of the federal water quality program. *Id.* Thus, EPA accepted and approved such balancing by Regional Boards in the exercise of their permitting authority when EPA approved the delegation of the federal water quality program to the State of California. • Within the Porter-Cologne Act, Cal. Water Code sections 13241 and 13263 combine to obligate the Board to critically consider a number of carefully prescribed, individual

[1] "Each regional board shall establish such water quality objectives in water quality control plans as in its judgment will ensure the reasonable protection of beneficial uses and the prevention of nuisance; however, it is recognized that it may be possible for the quality of water to be changed to some degree without unreasonably affecting beneficial uses. Factors to be considered by a regional board in establishing water quality objectives shall include, but not necessarily be limited to, all of the following: (a) Past, present, and probable future beneficial uses of water; (b) Environmental characteristics of the hydrographic unit under consideration, including the quality of water available thereto; (c)Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area; (d) Economic considerations; (e) The need for developing housing within the region; and (f) The need to develop and use recycled water." Cal. Water Code § 13241.

[2] "The regional board, after any necessary hearing, shall prescribe requirements as to the nature of any proposed discharge, existing discharge, or material change in an existing discharge, except discharges into a community sewer system, with relation to the conditions existing in the disposal area or receiving waters upon, or into which, the discharge is made or proposed. The requirements shall implement any relevant water quality control plans that have been adopted, and shall take into consideration the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and the provisions of Section 13241." Cal. Water Code § 13263(a).

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		balancing factors whenever fashioning WDRs and permit conditions for discharges into waters of the State. In addition, Regional Boards must assure that all permits and WDRs are in compliance with the Clean Water Act, as amended. Cal. Water Code § 13377. *City of Burbank,* 35 Cal. 4th at 626. These two obligations are not in conflict. *See id.* ("[S]ection 13377 forbids a regional board's consideration of any economic hardship … if doing so would result in the *dilution* of the requirements set … in the Clean Water Act.") (emphasis added); *see also id.* at 627 ("The federal Clean Water Act reserves to the states significant aspects of water policy (33 U.S.C. § 1251(b)), and it specifically grants the states authority to 'enforce any effluent limitation' that is not '*less stringent*' than the federal standard (*id.* § 1370, italics added [by the Court]).") • With respect to stormwater, the Clean Water Act requires that permits for discharges from MS4s must be issued, and that the permits must require controls to reduce the discharge of pollutants to the maximum extent practicable ("MEP"), including management practices, control techniques and system design and engineering methods, and such other provisions as the Administrator State determines appropriate to control pollutants. 33 U.S.C. § 1342(p)(3)(B)(iii). In adopting Section 1342(p) of the Clean Water Act, Congress intended to provide the EPA, or the regulatory agency of an approved state (in California, the Regional Boards), with broad discretion in determining the permit requirements necessary to meet MEP, particularly in light of federal provisions emphasizing that

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		compliance with water quality standards is to be achieved through an iterative process. *Building Industry Assn. of San Diego Count v. State Water Resources Control Board,* 124 Cal. App. 4th 866, 883 (4th Dist. 2004); *City of Abilene v. United States Environmental Protection Agency*, 325 F.3d 657, 660-61 (5th Cir. 2003); *Defenders of Wildlife v. Browner,* 191 F.3d 1159, 1166-67 (9th Cir. 1999). • In light of the water quality statutory framework created by Porter-Cologne, in exercising discretion associated with the issuance of permits pursuant to EPA's delegation of the federal water quality program, the Regional Boards must consider the factors expressly set forth in Sections 13241 and 13263 in exercising their broad discretion to determine appropriate permit conditions and WDRs necessary to control water quality to the MEP, as required by Clean Water Act § 1342(p) and Cal. Water Code §13377. Cal. Water Code sections 13241 and 13263 provide instructions to Regional Boards for exercising their discretion. • The Regional Board may not hide behind the MEP requirement to deny its obligation to undertake section 13241 balancing. Instead, conducting a proper and thorough balancing of pertinent factors under Section 13241 is an integral part of, and in fact, is *the* method that a Regional Board must use to exercise its discretion to determine appropriate permit requirements to meet the broadly worded and discretion-intensive MEP standard. Therefore, the Regional Board can not simply avoid complying with the

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		balancing mandate of Porter-Cologne by holding out everything they do in their municipal storm water permits as within the MEP standard. Instead, in exercising that broad discretion to determine what constitutes MEP under the federal Clean Water Act, the Regional Board must comply with Porter-Cologne, including the consideration of the factors in section 13241, as determined to be appropriate by EPA when it approved delegation of permitting and enforcement authority to the State of California. Further, in the case of stormwater permits, there is nothing in state or applicable federal law that prevents the Regional Boards from considering costs or other section 13241 factors in determining those permit requirements and pollutant restrictions that are necessary to *meet* the MEP standard, particularly because federal and state law provide broad discretion to the Regional Boards to undertake this task along with guidance in Cal. Water Code Section 13241 and 13263 with respect to accomplishing it. See, *City of Burbank v. State Water Resources Control Board,* 35 Cal. 4th at 629, *Id.* at 628 ("The states are free to manage their own water quality programs so long as they do not compromise the federal clean water standards"). *Cf.* 33 U.S.C. § 1311(a) v. 33 U.S.C. § 1342(p). • In issuing the *Draft Permit,* the Regional Board has stated that it is not required to, and has not fully considered the requirements proposed pursuant to Section 13241. But this position is not tenable in light of the broad discretion the Board has to determine what constitutes MEP under federal law, and the direction that state law gives the Regional Boards

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		for exercising that discretion. Given the breadth of the Board's delegated discretion, the Board cannot fairly argue that it lacks the discretion to apply and reconcile the six specific balancing factors which the California Legislature carefully prescribed in Water Code section 13241 when determining what controls are necessary to comply with MEP. Accordingly, BILD and BIA-GLA/V individually call out in the comments below many specific aspects of the Draft Permit which reflect the Board's failure follow Porter-Cologne in determining permit requirements that constitute MEP. • **Comment: The Balancing Requirements of Section 13241 Are Not Preempted by the Federal Clean Water Act.** Recent California case law reflects judicial confusion about whether the MEP standard is itself "preemptive" so as to nullify a Regional Board's state-law obligation to undertake the Section 13241 balancing. The confusion is reflected particularly in two recent cases, *City of Burbank* and *City of Rancho Cucamonga*. In *City of Burbank v. State Water Resources Control Board*, 35 Cal.4th 613 (2005), the California Supreme Court ruled that the state and regional agencies responsible for regulating state water quality (e.g., the Board) must comply with Porter-Cologne – including the need to balance the Section 13241 factors – to the extent the agencies impose terms or restrictions that "exceed the requirements of the federal Clean Water Act." *Id.* at 627. In doing so, the Court concluded that the record before it was insufficiently developed for it to determine whether the permit conditions at issue there exceeded the requirements of the

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		federal Clean Water Act. *Id.* at 628. • In addressing the confusion regarding preemption of balancing by the exercise of discretion, two preliminary notes are important. First, while confusion exists in recent cases, it has long been settled that the question of whether federal preemption exists is a question of law - not of fact. *See, e.g., Industrial Trucking Association v. Henry*, 125 F.3d 1305, 1309 (9th Cir. 1997), citing *Inland Empire Chapter of Associated Gen. Contractors v. Dear,* 77 F.3d 296, 299 (9th Cir. 1996) and *Aloha Airlines, Inc. v. Ahue,* 12 F.3d 1498, 1500 (9th Cir. 1993). *Bammerlin v. Navistar International Transportation Corp.*, 30 F.3d 898, 901 (7th Cir. 1994). Second, the burden of demonstrating to a court that federal preemption exists rests with the agency asserting the preemption. Preemption is an affirmative defense. *See Bronco Wine Co. v. Jolly*, 33 Cal.4th 943, 956-57 (2004); *United States v. Skinna,* 931 F.2d 530, 533 (9th Cir. 1990). • Therefore, a regional water quality control board asserting that federal law preempts the application of the Porter-Cologne Act's balancing requirements would itself bear the burden of demonstrating, as a matter of law, that actions required of it under state law are preempted by federal law. Accordingly, under a proper interpretation of preemption rules, the Regional Board faces an uphill battle procedurally to establish federal preemption. Substantive rules regarding finding preemption also must be considered. • The Supreme Court of the United States has opined

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		that courts should always attempt to reconcile the clash of laws to *avoid preemption. See Merrill Lynch, Pierce, Fenner & Smith v. Ware*, 414 U.S. 117, 127 (1973); *see also Rice v. Norman Williams Co.*, 458 U.S. 654, 659 (1982) ("[T]he inquiry is whether there exists an *irreconcilable conflict* between the federal and state regulatory schemes.") (emphasis added). Both state and federal courts generally recognize a presumption against preemption, even when there is express preemptive language, and there is a strong presumption against preemption or displacement of state laws. *See Washington Mutual Bank, FA v. Superior Court*, 75 Cal.App.4th 773, (1999) *citing Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 523 (1992) and *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996). In the absence of express federal preemptive language, the presumption against preemption is even stronger: if preemption is not express, the federal statute must clearly indicate that Congress 'left no room' for supplementary state regulation. *Hillsborough County v. Automated Medical Labs*, 471 U.S. 707, 713 (1985). • In light of these well-settled principles, despite the confusion of recent cases, the Regional Board cannot reasonably argue that the federal regulatory scheme at issue here preempts adherence to Water Code section 13241 balancing factors. First, there is no express federal preemption here that would negate Section 13241 balancing. Accordingly, if preemption exists, it must be implied – and overcome the strong presumption against it.

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		• Second, it cannot be fairly argued that the federal regulatory scheme at issue here "left no room" for supplementary state regulation. To the contrary, the federal regulatory scheme here elevates the state agencies acting under Porter-Cologne to the level of the primary governmental actor, and EPA via its delegation has authorized the State to carry out its federal water quality duties *by following* Porter-Cologne, including Section 13241. • Finally, as discussed in the Comment above, the Regional Board enjoys broad discretion under federal law to apply the Cal. Water Code section 13241 balancing factors (as mandated by the California Legislature) consistent with the requirement to issue stormwater permits controlling pollution to the MEP and pursuant to the broad delegation of authority from EPA that the Regional Board enjoys. Because determination of permit requirements that comply with MEP does not preempt Section 13241 balancing, the Regional Board should, but has not, considered the factors under Section 13241 in determining appropriate permit standards and requirements for inclusion in the *Draft Permit.*
3. There is no substantial evidence supporting the Regional Board's conclusion that a variety of *Draft Permit* Conditions and Requirements are	For example, the *Draft Permit* purports to establish Municipal Action Levels (MALs), but the MALs actually function as numeric effluent limitations. The *Draft Permit* specifically provides that two or more exceedances of the MALs constitute a violation of the *Draft Permit*. *Draft*	• **Comment:** Because the Regional Board has failed, to date, to conduct or document the proper analysis of proposed WDRs and permit requirements set forth in the *Draft Permit,* as required to properly implement the federal MEP standard in issuing the permit, numerous provisions in the *Draft Permit* are not reasonably designed to control pollutants in discharges to the MEP as circumspectly defined. As discussed above, the

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appropriate to implement MEP	*Permit,* F. 11., p. 23. In addition, project level rather than sub-watershed or watershed scale implementation of LID requirements (*Draft Permit*, Part 4 §E.1.I.)), and implementation of wet season grading and paving restrictions regardless of probability of precipitation (*Draft Permit*, Part 4 §f.1.), and hydromodification control standards, including EP=1 (*Draft Permit*, Part 4 §E.1.II.) and interim standards (*Draft Permit*, Part 4 §E.1.II.). See also, Attachment A hereto; Comments submitted by the Construction Industry Coalition for Water Quality, and the technical memorandum prepared by Geosyntec Consultants submitted therewith.	Regional Board must consider the WDRs and permits requirements of the *Draft Permit* in light of all of the factors set forth in Cal. Water Code Sections 13263 and 13241, including but not limited to costs and natural baseline conditions, to determine WDRs and permit requirements that constitute regulation of discharges to the MEP. The Regional Board has failed to consider the *Draft Permit* provisions in light of Cal. Water Code section 13241 factors, as discussed above, and further, has failed to consider the *Draft Permit* provisions in light of the definition of MEP, as established by case law, and in light of other factors determined by the State Board to be appropriate to evaluating achievement of MEP. As a result, many of the current provisions of the *Draft Permit* do not comport with appropriate legal parameters that circumscribe MEP. • Pursuant to case law and administrative determinations, MEP is a technology-based standard established by CWA § 1342(p)(3)(B)(iii). *Building Industry Assn. of San Diego County v. State Water Resources Control* Board, 124 Cal. App. 4th 866, 889 (4th Dist. 2004). MEP generally emphasizes pollution prevention and source control BMPs (as a first line of defense), in combination with treatment BMPs (as a second line of defense). *Id.* MEP considers economics, and is generally less stringent than BAT, which is an acronym for "best *available* technology economically achievable." *Id.* MEP does not require that all *possible* water quality controls are implemented. *Id.*

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		• The State Board has also issued a guidance memorandum addressing the factors that should be considered in determining whether permit standards and/or compliance actions achieve the MEP standard. This guidance provides: "To achieve the MEP standard, municipalities must employ" [and therefore MS4 Permits should be designed to require,] "whatever Best Management Practices (BMPs) are technically feasible (i.e., are likely to be effective) and are not cost prohibitive. The major emphasis is on technical feasibility. Reducing pollutants to the MEP means choosing effective BMPs and rejecting applicable BMPs only where other effective BMPs will serve the same purpose, or BMPs would not be technically feasible, or the cost would be prohibitive." *State Water Resources Control Board Memorandum, entitled "Definition of Maximum Extent Practicable,"* prepared by Elizabeth Jennings, Senior Staff Counsel, February 11, 1993; parenthetical added. • To ascertain requirements necessary to achieve the MEP standard, the State Board recommends consideration of several factors, including, *inter alia*: • Effectiveness: Will BMPs address a pollutant of concern? • Public Acceptance: Does the BMP have public support?

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		• Cost: Will the cost of implementing the BMP have a reasonable relationship to the pollution control benefits to be achieved? • Technical Feasibility: Is the BMP technically feasible considering soils, geography, water resources, etc.? *Id.* • Accordingly, issuance by the Regional Board of WDRs and permit conditions that are reasonably designed to achieve MEP as required by Cal. Water Code §§ 13263, 13377 and Clean Water Act §1342(p)(3) requires that the Regional Board identify and incorporate standards and conditions into municipal permits that will result in co-permittee implementation of source and treatment control BMPs, that are, among other things: (i) available, (ii) effective to control pollutants of concern, (iii) technologically feasible, (iv) not cost-prohibitive, and (v) the cost of which is reasonably related to pollution control achieved. • Many of the *Draft Permit* provisions described in more detail in (i) Attachment A to this Chart, and (ii) in the memorandum prepared by Geosyntec Consultants and submitted to the Regional Board by the Construction Industry Coalition for Water Quality are not reasonably tailored to comport with MEP, particularly to the extent that the provisions either: • require implementation of technologies that are not currently available (*e.g.*, MALs , 2 exceedances of

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		which constitute permit violations, discharge limits for dewatering BMPs during maintenance, numeric limits for construction discharges); • are not designed to consistently result in effective water quality benefits (*e.g.,* interim hydromod standard for sites under 50 acres, 'one size fits all' requirements to prioritize LID strategy over integrated water reuse management and other hydrologic and treatment controls regardless of local conditions); • are technically infeasible, unrealistic, or too stringent to implement using BMPs (*e.g.,* MALs, 2 exceedances of which constitute permit violations), discharge limits for dewatering BMPs during maintenance, 'one size fits all' limitations for impervious surface, pre- and post-development duration matching, and pre- v. post- Ep matching, regardless site location, tributary area condition, local soils, channel stability and similar factors); and/or • the cost would exceed the water quality benefit of implementation (*e.g.,* project level rather than sub-watershed or watershed scale implementation of LID requirements, implementation of construction site numeric limitations, and implementation of wet season grading and paving restrictions, regardless of probability of precipitation). • Because the Regional Board has not properly exercised

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		its discretion, critically considering appropriate available evidence regarding factors set forth in Cal. Water Code § 13241 and State Board guidance in establishing the WDRs and permit requirements of the *Draft Permit*, the provision outlined in Attachment A and the Geosyntec memorandum, and addressed herein do not currently comport with a proper interpretation of MEP. In many cases, the current provisions of the *Draft Permit* are *not* (i) available, (ii) effective to control pollutants of concern, (iii) technologically feasible, (iv) economically feasible, (v) rationally related to baseline environmental conditions generally or locally and/or (vi) reasonably cost effective in light of anticipated pollution control. • **Comment:** The Regional Board says they considered costs, although in their view they did not have to do so. The Regional Board has failed, however, to provide any kind of "analytical roadmap" sufficient to explain how the Porter-Cologne balancing factors have been reconciled, how cost estimates where considered and if they are in fact accurate in terms of the costs of compliance with the *Draft Permit* provisions. *Draft Permit,* Finding F.16., p. 24. For example, the *Draft Permit* contains seasonal grading restrictions for specific types of sites (*Draft Permit* Part 4 §F.1.) which prohibit grading from October 1-April 15. The cost of such a prohibition will depend on several factors including the cost of land/acre, which includes the direct cost of the land and all costs related to acquisition, entitlement, etc. and the project internal rate of return, which can vary between 20 and 30%.

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		Calculations show that for even a small 10-acre development, prohibiting grading for 6 months during the "rainy season" would result in a cost of between $500,000 and $1,000,000. *See* Attachment B. Yet the water quality benefits that would be achieved by this restriction are dubious and unsubstantiated, particularly in light of the fact that, on average, only 23 to 28 of approximately 195 days during the wet season does rainfall occur. As a result, the proposed restrictions are not cost effective or designed to comport with a proper determination of requirements necessary to achieve MEP, as discussed in the preceding comment, and they are therefore arbitrary and capricious. The *Draft Permit* also sets forth numeric effluent limitations for construction site runoff that must be met to obtain a wet season grading prohibition variance. *Draft Permit,* Part 4 § F(b)(1), p. 64. To achieve the numeric effluent limits specified, advanced treatment methods must be employed. Research conducted by CICWQ determined that implementation of an advanced treatment system using chemical polymer addition would result in direct costs between $2400 and $9000 per acre for an example site handling anywhere from 1-inch to 20-inches, respectively, of total runoff per season. *See* Attachment C. Key variables include the size of the construction site, total gallons of stormwater treated (direct correlation to amount of polymer required), and the amount of detention needed and associated mixing, piping and pumping systems to treat stormwater. All advanced treatment vendors interviewed by CICWQ stated that advanced treatment systems achieve 10 NTU effluent *when*

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		combined with existing erosion control BMPs that reduce the concentration of influent sediment. Therefore, the cost of advanced treatment is *in addition to* existing erosion and sediment control stormwater BMPs that are required in Ventura County; CICWQ polled Ventura County major builders and the range of cost for existing construction phase erosion and sediment control is between $5,000 and $8,000 per dwelling unit. Using an average of 3.5 dwelling units per acre and the mid-point cost per dwelling unit for existing BMPs plus the cost of treating 10 inches of total runoff per acre per season, the combined cost of construction phase erosion and sediment control BMPs plus Advanced Treatment on a per acre basis is approximately $28,000. • Moreover, CICWQ research determined that currently there are an insufficient number of vendors providing advanced treatment capability (2 vendors currently operating in ALL of southern California), so that treatment for all hillside construction sites, sites within or discharging into ecologically sensitive areas, or sites discharging into 303(d) listed waterbodies for sediment within the permit area is technically infeasible. In light of CICWQ's research, the proposed restrictions are clearly not cost effective or designed to comport with a proper determination of requirements necessary to achieve MEP, as discussed in the preceding comment, and they are therefore arbitrary and capricious. • The Regional Board's failure to analyze the cost of applying numeric effluent limits is all the more glaring in light

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		of the fact that the available science indicates that numeric effluent limits are only feasible where Advance Treatment with polymers in employed without consideration of natural baseline loads of, for example, sedimentation and turbidity. *See* General Issue No. 20, below. Reconciliation of the Porter-Cologne balancing factors in accordance with the Regional Board's enabling statute would serve to illuminate the unreasonableness of the requirements set forth in the *Draft Permit.* • The chart attached hereto as Attachment A, and the technical memorandum prepared by Geosyntec Consultants and submitted to the Regional Board by the Construction Industry Coalition for Water Quality are hereby incorporated into these comments by reference.
4. State Unfunded Mandates	As further detailed in Attachment A, the CICWQ letter, the Geosyntec memorandum, comment 3 above, and the sections below, abundant new *Draft Permit* requirements for co-permittees to review and approve SWPPP and BMP plans, inspect, monitor and enforce compliance with a variety of Regional Board permits, incorporate certain specified structural BMPs throughout their jurisdictions (such as catch basin screens) and requirements to maintain post-construction BMPs, all create huge unbudgeted municipal costs. The Regional	• **Comment:** The Regional Board has the legal authority under State law to impose mandates which "exceed" or are "more explicit" than the mandates or specific requirements of federal law. *Building Industry Association of San Diego County v. State Water Resources Control Board*, 124 Cal.App.4th 866 (2004); *City of Burbank v. State Water Resources Control Board*, 35 Cal.4th 613 (2005). However, when the Regional Board elects to use its discretion to impose mandates that do not comport with the federal Clean Water Act, including MEP, it is electing to impose a state mandate within the meaning of California Constitution, Art. XIII B, Section 6. The Regional Board may impose such state mandates under Porter-Cologne; however, once imposed, the

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	Board's position is that the co-permittees are responsible for funding the implementation of all provisions of the *Draft Permit*, no matter the cost, from general funds, district assessments, plan review fees, permit fees, industrial/commercial user fees, revenue bonds, grants or other local funding mechanisms.	California Constitution requires that they must be funded by the State. Since portions of the *Draft Permit* "are more explicit" than and "exceed" a proper determination of standards required to implement the federal CWA, including MEP, as described in comment 3 above, implementation of these provisions must be funded by the State. • See Attachment A, the CICWQ letter and the Geosyntec memorandum for further detailing of the provisions of the *Draft Permit* which do not comport with the legal parameters that circumscribe MEP. Examples of such provisions include the expanded inspection and enforcement requirements imposed on the co-permittees under the *Draft Permit*.
5. CEQA	The Regional Board's position is that they do not have to comply with CEQA in light of the recent *County of Los Angeles* case. *Draft Permit*, Findings § G.1., p. 24.	• **Comment.** Unless an appropriate determination of *Draft Permit* requirements necessary to achieve MEP is made, the requirements of the *Draft Permit* do not comport with proper implementation of MEP and the Clean Water Act, and by default must be adopted pursuant to State law. CEQA analysis (using functional equivalent) must be conducted for provisions of the *Draft Permit* adopted pursuant to State law. *County of Los Angeles v. State Water Resources Control Board,* 143 Cal.App.4th 985, modified by 2006 Cal.App.LEXIS 1744 (2006). • **Comment:** Water Code § 13389 was part of Porter-Cologne adopted to accomplish the delegation of administration of the federal Clean Water Act, including the issuance of NPDES permits, to California. It does not exempt

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		from CEQA other permits and/or requirements imposed by the Regional Board under Porter-Cologne. Cal. Water Code § 13372. Cal. Water Code § 13372 provides that the provisions of Chapter 5.5 of Porter-Cologne "apply only to actions required under the Federal Water Pollution Control Act and acts amendatory thereof or supplementary thereto." Section 13389 is part of Chapter 5.5 of Porter-Cologne. • **Comment:** The court in *Committee for a Progressive Gilroy v. State Water Resources Control Board*, 192 Cal.App.3d 847 (1987) held that orders restoring water waste discharge levels to originally approved levels for a wastewater treatment plant were not exempt from compliance with CEQA by section 13389 because that section applies only to actions required under the Clean Water Act. Orders of the Regional and State Boards regarding wastewater discharge issued under the authority of the Porter-Cologne Water Quality Control Act were not required by the Clean Water Act and thus not exempt from CEQA review. In its discussion of Cal. Water Code Section 13389 a California appellate court stated, "Chapter 5.5 of the Porter-Cologne Act was enacted to allow the State of California to administer the National Pollutant Discharge Elimination System (NPDES) permits program. This chapter was patterned after the Federal Water Pollution Control Act which created the NPDES permit system. Section 1371 of that act excludes the issuance of NPDES permits from the requirements of the National Environmental Policy Act after which CEQA was patterned. It is fairly apparent that the exemption for the promulgation of waste discharge

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		requirements from CEQA contained in Water Code section 13389 was meant to parallel the exemption for the issuance of NPDES permits from the requirements of NEPA found in section 1371 of the federal act." *Pacific Water Conditioning Assn., Inc. v. City Council,* 73 Cal.App.3d 546, 557 (1977). Thus, the purpose of section 13389 was to exempt from CEQA permits issued by the State under the federal Clean Water Act – not WDRs that are adopted under Porter-Cologne. Because the Regional Board is adopting WDRs under Porter-Cologne rather than simply implementing the NPDES program mandated by the federal Clean Water Act, section 13389 does not apply to exempt such an action from CEQA review.
6. End-of-Pipe pollutant concentrations are equated to receiving water violations	The *Draft Permit* specifies "the 'end of pipe' compliance points for MALs are at 36 inches in diameter or greater discharge pipes with outfalls to receiving waters." The *Draft Permit* further indicates that two or more exceedances of MALs at these 'end-of-pipe' locations will be a violation of the permit, and will trigger the requirement to make an RWL, which is a report of violation of *receiving water* limitations. *See, e.g., Draft Permit,* Findings § F.11. p. 23; Part 2, pp 29-30.	• **Comment:** The effect of these provisions is to improperly make 'end-of-pipe' exceedances a violation of the MS4 permit and presumptive evidence of receiving water limit violations, even if receiving water data itself shows no violations. As such, the MALs are serving as numeric effluent limitations. This approach constitutes inappropriate science and policy, because end-of-pipe loads and concentrations cannot properly be determinative of receiving water violations without using procedures that take into account existing controls on point and nonpoint sources of pollution, the seasonal or flow variability of the pollutant or pollutant parameter, receiving water quality monitoring data, assimilative capacity, mixing zones and, where appropriate, dilution factors. *See for purposes of reference only,* 40 CFR. §122.44(d).

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		• **Comment:** Specifying end-of-pipe effluent limitations that are presumptive evidence of receiving water violations is also legally inappropriate. Neither the federal Clean Water Act or Porter-Cologne mandate that an "end of pipe" detection based approach be applied to storm water regulation. Further, a detection based approach does not comport with the purpose and policies of the Clean Water Act and Porter Cologne. With respect to the federal Clean Water Act's regulation of storm water the focus is on controlling discharges of pollutants to the maximum extent practicable or MEP, and the implementation of management measures which are appropriate. EPA Guidance on Municipal Storm Water Permitting entitled "*National Pollutant Discharge Elimination System (NPDES) Storm Water Program Questions and Answers*" (January 21, 2004), provides, "Under the NPDES storm water program, there is a progression of approaches used to ensure that water quality standards are achieved: 1) setting technology-based standards; 2) defining maximum extent practicable abatement measures and technology (giving the permitting authority flexibility in how to achieve it); 3) establishing performance standards to address problem parameters; and 4) establishing numerical effluent limits. The storm water program utilizes a BMP framework, which is a combination of approaches 1, 2 and 3, because EPA feels that the vast majority of storm water discharges can be adequately controlled to meet water quality standards by managing activities that have the potential to contribute pollutants."

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		• Further, EPA's Phase II stormwater regulations generally defining MEP and appropriate approaches to implement MEP provide that "narrative effluent limitations requiring implementation of best management practices (BMPs) are generally the most appropriate form of effluent limitations when designed to satisfy technology related requirements (including reductions of pollutant to the maximum extent practicable) and to protect water quality." 40 C.F.R. §122.34(a). Therefore, these general regulations go on to specify that "implementation of BMPs . . . constitutes compliance with the standard of reducing pollutant to the MEP." *Id. See also, Defenders of Wildlife v. Browner,* 191 F.3d 1159 (9th Cir. 1999). In addition, as discussed more fully in comment 3 above, implementation of the MEP technology-based standard under the CWA requires consideration of available technologies to achieve the permit standard, and technical feasibility of implementation. The State Water Resources Control Board Blue Ribbon Panel Report found that it was not technically feasible for urban areas to meet numerical effluent limitations. p. 8; *See also,* Geosyntec memorandum. • Moreover, the State Board has ruled that the iterative approach to BMP implementation and adjustment, focusing on timely improvement of BMPs, is appropriate for stormwater quality control, and the State Board has determined that it is generally not appropriate to require compliance with numeric effluent limitations. *State Water Resources Control Board,*

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		Order WQ 2001-15, p. 8. • Thus, the focus of both the federal Clean Water Act and Porter-Cologne is on the protection of the beneficial uses that apply to receiving waters – not on meeting an arbitrary numeric limit at the point of discharge to a municipal storm water system. • As a result, these provisions do not comport with a proper determination of MEP, lack scientific basis, constitute poor policy, are arbitrary and capricious, and violate Water Code section 13262(a), which requires adoption of conditions *reasonably* required to protect beneficial uses and implement water quality objectives. The permit should be revised to incorporate the concept of action levels developed and implemented consistently with the Blue Ribbon Panel Report, and as described in more detail in the Geosyntec memorandum.
7. In-stream receiving water quality violations are presumptive evidence of MS4 Permit violations	This issue is the flipside of the issue addressed in Comment 6 above. The *Draft Permit* also contains provisions that two receiving water exceedences of MALs as determined by in-stream mass emissions data will be presumptive evidence that MS4 discharges violate MEP and therefore constitute a permit violation. *Draft Permit,* Part 2, pp. 29-30.	• **Comment:** The effect of these provisions is to improperly make receiving water exceedances a violation of the MS4 permit, regardless of whether the MS4 discharge is actually a significant contributor of pollutants to the receiving water. As such, the MALs are again serving as numeric effluent limitations, but in this case are being applied in receiving waters as evidence of discharge characteristics. This approach constitutes inappropriate science and policy, because receiving water monitoring data cannot properly be determinative of end-of-pipe loads and concentrations for MS4 systems, without using procedures that take into account

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		existing controls on point and nonpoint sources of pollution, and the actual probable source of a particular pollutant or pollutant parameter within the receiving water. • **Comment:** Specifying effluent limitations that are applied in the receiving water and that constitute presumptive evidence of end-of-pipe discharge violations is also legally inappropriate, for the same reasons discussed under Comment 6 above. • **Comment:** As a result, these provisions do not comport with a proper determination of MEP, lack scientific basis, constitute poor policy, are arbitrary and capricious, and violate Water Code Section 13262(a), which requires adoption of conditions r*easonably* required to protect beneficial uses and implement water quality objectives. The permit should be revised to incorporate the concept of action levels developed and implemented properly and consistently with the Blue Ribbon Panel Report, and as described in more detail in the Geosyntec memorandum.
8. Elimination of Vested Rights/ Retrofit of Approved Projects Ready for, and Under Construction.	The *Draft Permit* contains no grandfathering provisions for approved projects, or even projects with vested rights, but applies a plethora of new requirements and conditions to all new Development and Redevelopment sites. As a result, the new requirements imposed by the *Draft Permit* must be fulfilled for all new development and redevelopment	• **Comment:** The *Draft Permit* as written will eviscerate project approvals and vested rights, creating the obligation to retrofit projects to address new requirements at a stage in development that does not lend itself to practical re-design. A grandfathering provision exempting projects with approved tentative maps and/or vested rights should be incorporated into the *Draft Permit*. Tentative maps, final maps and development agreements are intended to provide protections to allow the developer to proceed with development in substantial

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	projects, regardless of construction status or vested rights. This will force co-permittees to require retrofitting of approved and/or vested projects, even if they are under construction. See *Draft Permit,* Findings § F.1., p. 20.	compliance with the rules and policies in effect on the date in which the subdivider's application was deemed complete, or in the case of a development agreement, on the effective date of that agreement. *See*, e.g. Cal. Gov. Code § 66498.1. However, the applicable statutes related to vested rights provide an exception when failure to condition or deny a further project approval or entitlement would pose a danger to the health and safety of residents of the community or when the condition or denial is required by federal or state law. *See, e.g.*, Cal. Gov. Code § 66498.1(c). Because the *Draft Permit* does not contain a grandfathering provision, it is likely that vested protections will be eliminated as necessary to avoid a conflict with the *Draft Permit*. Thus, projects with vested maps that are already financed, and even those projects where work has already begun, may have to implement the new requirements mandated by the *Draft Permit*, including those standards dealing with LID, hydromodification and treatment BMPs regardless of technical feasibility and cost, which to date are factors that have not been considered for new projects, much less projects already approved and/or under construction. • **Comment:** Failure to properly consider effects of the *Draft Permit* provisions on projects that are vested, approved, and/or under construction is arbitrary and capricious, constitutes a misapplication of the MEP standard, and violates Water Code section 13262(a), which requires adoption of conditions r*easonably* required to protect beneficial uses and implement water quality objectives.

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		• **Comment**: The San Diego Regional Board recognized these flaws in their recently adopted MS4 Permit, and revised their proposed permit prior to adoption to incorporate a grandfathering provision for vested, approved and/or project under construction. We similarly recommend that the following grandfathering provision should be incorporated into the *Draft Permit* to address the issues outlined in this comment: "Updated Development and Redevelopment requirements shall apply to all projects or phases of project, unless, at the time any updated SUSMP or hydromodification requirement commences, the projects or project phases meet any one of the following conditions: (i) the project or phase has received final tentative tract map approvals; (ii) the project or phase has begun grading or construction activities; or (iii) a Copermittee determines that lawful prior approval rights for a project or project phase exist, whereby application of an updated SUSMP or hydromodification requirement to the project is practically or legally infeasible. Where feasible, the Copermittees shall utilize the SUSMP and hydromodification update periods to ensure that projects undergoing approval processes include application of the updated SUSMP and hydromodification requirements in their

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		plans."
9. Requirements to Condition all Development to provide Water Quality Mitigation consistent with New Permit, Regardless of Legal Authority of Local Agencies to do so	The *Draft Permit* requires that the Co-permittees develop authority to condition projects to provide storm water mitigation consistent with new Permit requirements, regardless of whether any further discretionary permits for the project are necessary. *Draft Permit,* Findings § F.1.	• **Comment:** Local agencies have limited land use authority to condition projects that have already completed CEQA review and received all discretionary permits and approvals. By definition, issuance of ministerial permits do not involve discretionary action, and, while local agencies can enforce all conditions or approval and mitigation measures specified for a project prior to issuance of ministerial permits, they cannot impose new conditions to ministerial permits. 14 CCR § 15041; Cal. Pub. Res. Code § 21166. Further, common law and statutory vested rights can impact the ability of any local agency to impose additional requirements on certain projects. *See* Cal. Gov. Code § 65864 *et seq*. (development agreements); Cal. Gov. Code § 66498.1 *et* seq. (subdivision map act); *Avco Community Developers, Inc. v. South Coast Reg'l Comm'n*, 17 Cal.3d 785, 791 (1976) (common law vesting rights). As a result, this mandate that projects be conditioned, regardless of whether any discretionary approvals are still necessary for development of the project, by the Regional Board forces municipalities to violate State law and therefore constitutes an *ultra vires* act on the part of the Regional Board.
10. Incorporation of Numeric Limits -- MALs	The *Draft Permit* purports to establish Municipal Action Levels (MALs), but the MALs actually function as numeric effluent limitations. The *Draft Permit* specifically provides that two or more exceedances of	• **See Comments 6 and 7 above.** • **Comment:** Because the Draft Permit specifies that 2 or more exceedances of the MALs constitute a permit violation, from a practical standpoint the MALs are not action levels. They are numeric *effluent* limitations. Incorporation of

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	the MALs constitute a violation of the *Draft Permit*. *See, e.g., Draft Permit,* F. 11., p. 23. Further, exceedences of MALs improperly constitute presumptive evidence of receiving water standards, as well as MEP and discharge standards. *Draft Permit,* Part 2, pp 29-30.	numeric effluent limits is contrary to the Blue Ribbon Panel Report recommendations that requiring MS4 Permit discharges to comply with numeric limits is not technically feasible at this time. *Storm Water Panel Recommendations to the California State Water Resources Control Board – The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities* (June 19, 2006) ("Blue Ribbon Panel Report") p. 8. The Blue Ribbon Panel report concluded that action levels should only be used to "trigger appropriate management response," rather than triggering regulatory response and penalties as in the *Draft Permit*. p. 8. • Further, the State Board "*Policy for Implementation and Enforcement of the Non-Point Source Pollution Control Program*" (May 2004) provides that a "Key Element" of a NPS program is inclusion of "a description of the MPs and other program elements that are expected to be implemented to ensure attainment of the implementation program's stated purposes(s)." p. 12. Thus, the focus of the State Board NPS program is on development and implementation of BMPs as opposed to incorporation of specific numeric limits into regulatory programs established to deal with NPS pollution. In addition, the State Board "*Non-Point Source Program Strategy and Implementation Plan, 1998-2013*" (January 2000) provides, "RWQCBs will generally refrain from imposing effluent requirements on dischargers who are implementing BMPs in accordance with a waiver of WDRs, an approved MAA, or other SWRCB or RWQCB formal action. Once the

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		SWRCB or RWQCB has formally approved BMPs, they will become the primary mechanism for meeting water quality standards. While compliance with BMP requirements cannot excuse a violation of water quality standards, the RWQCBs may rely on their implementation of BMPs to demonstrate compliance with standards." p. 56. Thus, the incorporation of MALs in this fashion in the *Draft Permit* is inconsistent with the State Board NPS program. • Moreover, the State Board has ruled that the iterative approach to BMP implementation and adjustment, focusing on timely improvement of BMPs, is appropriate for stormwater quality control, and the State Board has determined that it is generally not appropriate to require compliance with numeric effluent limitations. *State Water Resources Control Board,* Order WQ 2001-15, p. 8. • The Phase II Regulations similarly emphasize focused attention to requiring implementation of BMPs, rather than imposition of numeric effluent limits in stormwater permits. See cases and regulations cited in Comment 6 above.[3]

• [3]In addition to the authority discussed in comment 6, the Phase II Municipal Storm Water Regulations provide that if an MS4 operator "implements the six minimum control measures in § 122.34(b) and the discharges are determined to cause or contribute to non-attainment of an applicable water quality standard, the operator needs to expand or better tailor its BMPs within the scope of the six minimum control measures. EPA envisions that this process will occur during the first two to three permit terms." Federal Register, Vol. 64, No. 235. (Wednesday, December 8, 1999). This suggests an iterative approach where if exceedances are determined to exist that additional BMPs are to be implemented as opposed to finding that exceedances are violations of the *Draft Permit*. Incorporating MALs as set forth in the *Draft Permit* goes beyond the mandate of the federal Clean Water Act and its

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		• Incorporating the MALs in the manner set forth in the *Draft Permit* is inconsistent with the Blue Ribbon report, a proper interpretation of the MEP Standard, EPA's Phase II regulations, and State Board policy for storm water permits. The current MAL provisions also improperly preempt the State Board's policy making function regarding incorporation of numeric effluent limits into storm water permits based upon the Blue Ribbon report. Therefore, MALs, if they are retained, should be reconstituted as true action levels. As recommended by the Geosyntec memo, the action levels should solely trigger review and implementation of more effective BMPs, to the extent that more effective BMPs are available. This type of an approach would be consistent with the approach recommended in the Blue Ribbon Panel Report and would be consistent with law and policy guidance. To the creation of *action levels,* rather than numeric limits, provisions of the *Draft Permit* stating that exceedances of the MALs constitute a violation of the permit and/or receiving water standards must be deleted, and the Regional Board should expressly limit the consequences of MAL exceedances to triggering new BMPs, to the extent that such BMPs are available. • **Comment:** The currently proposed MAL values are inappropriately derived and fail to comply with the recommendations of the Blue Ribbon Report. The currently

implementing regulations to the extent that the *Draft Permit* applies to small MS4s. Since the permit provisions are not severable, the *Draft Permit* should be revised to implement the Phase II regulations with respect to all MS4s regulated.

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		proposed MALs are based upon the median end-of-pipe discharge concentrations observed for the various pollutants derived from the National Stormwater Quality Database (NSQD). There are three problems with this approach to setting action levels. First, the Blue Ribbon Panel Report specifically concludes that action levels should be "upset values" for pollutant concentrations that are "above normal variability." p. 8. The MAL values in the *Draft Permit* are median values that do not represent pollutant concentrations that are "upset values" or "above normal variability," and they are therefore inappropriately low for purposes of establishing an action level. Second, the Blue Ribbon Panel Report recommends that action levels should start in the upper 10th percentile for each pollutant concentration. p. 9. The median value is therefore also inappropriately low, as it represents the 50th percentile. Third, the MALs are improperly derived from a national database, populated by data that do not correlate with or represent conditions in Ventura County. Therefore, the action limits chosen are not consistent with the Blue Ribbon Report recommended methodology for determining action levels, and should be recalculated to represent the upper 10th percentile pollutant concentration based on a database that is representative of local conditions. Options are the Zone 6 data, which is a subset of the NSQD database. Alternatively, data collected pursuant to local storm water monitoring programs should be used. That is the very purpose underlying the storm water program monitoring requirements. Absent the use of local data, the MAL values in the *Draft Permit* are not

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		appropriately tailored to runoff conditions in Ventura County and are too low to be useful. *See* analysis of MAL values in the Geosyntec memorandum. • **Comment:** As set forth above, the Blue Ribbon Panel Report concluded that incorporation of numeric effluent limits into municipal storm water permits is not technically feasible for a number of reasons. p. 8. The Regional Board has not provided any information or documentation that would support a determination that compliance with such limits is feasible and evidence presented and analyzed by experts convened by the State Board to look specifically at this issue concluded that in fact such an action was infeasible at this time and that a number of facts must be considered prior to the incorporation of such limits into storm water permits. • **Comment:** The approach of the *Draft Permit* with respect to MALs constitutes the imposition of flawed numeric effluent limitations on stormwater discharges. As a result, the *Draft Permit* does not comply with the recommendations of the Blue Ribbon Report, is technically flawed, and is technically infeasible to implement. Accordingly, as written, the *Draft Permit* provisions regarding MALs are an improper application of the MEP standard, are arbitrary and capricious, and violate Cal. Water Code Section 13263(a). To address these flaws, the *Draft Permit* provisions must be revised as recommended in the Geosyntec memorandum.

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11. Incorporation of numeric limit -- Waste Load Allocations (WLAs)	Contrary to *Draft Permit* Finding § F.3, p. 21, the *Draft Permit* merely incorporates numeric receiving water limits as WLAs for particular pollutants/waterbodies, instead of, and without specifying implementation measures. *See, e.g., Draft Permit,* Part 3, § A, Part 6 §§ 3, 4, pp 91-94.	• **Comment**: 33 U.S.C. § 1342(1)(1) and (p)(3)(B)(iii) and EPA Phase II Municipal Stormwater Regulations require implementation of treatment technologies to meet the MEP standard. Pursuant to these regulations and the federal Clean Water Act, the Regional Board is to provide tools to meet water quality standards and those tools should appear in the *Draft Permit*. • The Phase II Municipal Storm Water Regulations provide that if an MS4 operator "implements the six minimum control measures in § 122.34(b) and the discharges are determined to cause or contribute to non-attainment of an applicable water quality standard, the operator needs to expand or better tailor its BMPs within the scope of the six minimum control measures. EPA envisions that this process will occur during the first two to three permit terms." Federal Register, Vol. 64, No. 235. • The State Board "Policy *for Implementation and Enforcement of the Non-Point Source Pollution Control Program*" (May 2004) provides that a "Key Element" of a NPS program is inclusion of "a description of the MPs and other program elements that are expected to be implemented to ensure attainment of the implementation program's stated purposes(s)." p. 12. Thus, the focus of the State Board NPS program is on development and implementation of BMPs as part of an iterative process, as opposed to incorporation of specific numeric limits into regulatory programs established to deal with NPS pollution.

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		• In addition, the State Board "*Non-Point Source Program Strategy and Implementation Plan, 1998-2013*" (January 2000) provides, "RWQCBs will generally refrain from imposing effluent requirements on dischargers who are implementing BMPs in accordance with a waiver of WDRs, an approved MAA, or other SWRCB or RWQCB formal action. Once the SWRCB or RWQCB has formally approved BMPs, they will become the primary mechanism for meeting water quality standards. While compliance with BMP requirements cannot excuse a violation of water quality standards, the RWQCBs may rely on their implementation of BMPs to demonstrate compliance with standards." p. 56. Thus, the incorporation of numeric limits in this fashion in the *Draft Permit* is inconsistent with the State Board NPS program. • Contrary to *Draft Permit* Findings, §F.3, there are no BMPs specified for several of the TMDL WLAs incorporated into the order that "translate" the WLA numeric targets into MS4 requirements that are consistent with assumptions and requirements of the TMDLs. • As a result, these WLA implementation provisions are insufficient under federal law and State Board NPS policy because no mechanisms are provided in the *Draft Permit* so as to allow the regulated communities to meet the WLAs. Identification of appropriate implementation actions for MS4 operators to meet numeric WLAs is particularly important because (i) all of the WLAs incorporated into the permit are *receiving water* targets, rather than *discharge* targets as

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		envisioned by section 303(d) of the Clean Water Act and the federal regulations, 33 U.S.C. § 1313(d), and (ii) neither the *Draft Permit* nor the TMDL provisions as incorporated into the *Draft Permit* currently contain implementation measures applicable to MS4s. The *Draft Permit* must be amended to incorporate BMPs, management measures and other implementation tools to achieve WLAs to comply with state and federal law, particularly where those tools are not provided in the TMDL implementation plans or the *Draft Permit.* • **Comment:** The specification of numeric WLAs without identification of BMPs or management measures that will "translate" those WLAs into MS4 Permit requirements are inconsistent with the proper implementation of the MEP standard because there are no *available,* technologically feasible or cost effective measures specified to implement the WLAs. Therefore adoption of these provisions of the *Draft Permit* is inconsistent with a proper application of MEP.
12. Incorporation of numeric limits -- Dewatering	The *Draft Permit* specifies numeric discharge limitations for dewatering treatment BMPs prior to discharge "into" MS4 systems. Numeric discharge limits are specified for discharges from BMP maintenance addressing 13 pollutants,	• **Comment.** See comment above regarding the invalidity of regulating pollutants discharged "into" storm drains. • **Comment:** The *Draft Permit* states that the limits are based upon Basin Plan water quality objectives and EPA Parameter Benchmark Values, but in fact the limits do not appear to be based on these sources. Therefore, the discharge

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	including bacteria, metals, nutrients, and conventional parameters such as TDS and TSS. *See, e.g., Draft Permit* Part 4 § G.6.g.3., pp 79-80.	limits chosen are not supported by substantial evidence, and are arbitrary and capricious. • **Comment:** The limits are too stringent a requirement for dewatering treatment BMPs, and therefore this provision of the *Draft Permit* is an improper application of the MEP standard. See Geosyntec technical memorandum. • **Comment:** To cure the deficiencies in the *Draft Permit,* these provisions need to be revised as recommended in the Geosyntec memorandum to specify a feasible BMP that can be used to control discharges from BMPs during maintenance activities.
13. Incorporation of Infeasible "Zero" Pollutant Limits	The *Draft Permit* prohibits certain categories of runoff unless *all* pollutants are eliminated from such runoff. *Draft Permit*, Part 1 § B.2 and 3 and Footnote 2.	• **Comment.** It is not technically feasible or realistic to mandate removal of all pollutants from runoff, as required to comply with the prohibition as drafted. While BMPs and combinations of BMPs can be designed to eliminate appreciable concentrations and loads, they cannot eliminate all pollutants, nor is it necessary to eliminate all concentrations and loads to meet receiving water standards. As a result, these provisions, as written, constitute an improper application of MEP, and violate Water Code section 13262(a), which requires adoption of conditions *reasonably* required to protect beneficial uses and implement water quality objectives. • **Comment.** The *Draft Permit* should be revised to preclude discharges that are significant contributors of pollutants to receiving waters, as contemplated by federal regulations implementing the Clean Water Act. 40 CFR 122.26(a)(v).

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14. Hydromodification Controls –Mandatory Low Impact Development	• Imposition of LID requirements on *all* New Development (any land disturbing activities; structural development, including construction or installation of a building or structure, creation or replacement of impervious surfaces; and land subdivision) and Redevelopment Projects (creation, addition or replacement of 5,000 square feet or more of impervious surface on an already developed site). *Draft Permit,* Part 4, §§ E.1. f. and E.I.1., pp. 50-51. • The *Draft Permit* provides that LID is primarily a source control strategy and *minimizes the need* for large sub-regional and regional treatment control BMPs. *Draft Permit,* Part 4, §§ I.1., p. 51.	• **Comment.** There is not substantial evidence in the SCCRWP study, other documents cited in the *Draft Permit (See,* Finding 18, p. 18), or in the scientific literature (*See* Geosyntec memorandum), supporting the assertion that small scale (rather than sub-watershed or watershed scale) infiltration or application of LID practices is necessary to avoid degradation and prevent water quality impacts. Further, there is no evidence that LID techniques applied on a project-by-project basis to even the smallest projects are more effective for controlling hydromodification impacts than the implementation of IWRM strategies or vegetated regional BMPs. There is evidence that LID alone cannot fully mitigate hydromodification impacts, particularly when applied to very small, infill and redevelopment projects that discharge to hardened or substantially degraded channels, and/or which are located in largely impervious sub-watersheds. • **Comment:** There is no evidence or discussion of the water quality benefits that will result from project-by-project, very small scale application of LID requirements. In fact, these requirements may actually preclude certain storm water conservation and reuse BMPs, and would prevent regional BMP solutions that benefit existing untreated development storm water. In circumstances where sites discharge to waterbodies that are not subject to destabilization (concrete channels, large lakes, bays estuaries), these measures will provide only a very small incremental water quality benefit, and will therefore not be cost effective. At the same time,

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		there are extraordinary costs associated with these requirements. According to work done in San Diego, the additional costs associated with imposition of stringent LID requirements on a lot-by-lot basis for infill and redevelopment projects with land constraints, particularly when combined with application of the other hydromodification standards set forth in the *Draft Permit,* results in significant land-take, and can result in costs averaging $30,000 to $50,000 per lot, for those projects where implementation of the standards is even technically feasible. For many types of projects, the application of standardized LID and other hydromodification control requirements will be technically infeasible based on local soils conditions, infiltration restrictions, groundwater conditions and similar physical parameters. • **Comment:** The bias in the *Draft Permit* provisions against regional application of volume reduction BMPs eliminates tools that should be available to co-permittees and project applicants to address hydromodification control, and creates internal inconsistency in the *Draft Permit* as it is inconsistent with *Draft Permit,* Finding 15, p. 17. • **Comment:** Stringent application of LID principles on a lot-by-lot scale are technically infeasible for a variety of sites, including small new development infill sites, most redevelopment sites, and sites with high groundwater, or contaminated groundwater that should not be impacted. • **Comment**: The *Draft Permit* LID requirements are technically infeasible, are not cost effective, and/or are

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		ineffective in controlling water quality and hydromodification impacts, as outlined by the Geosyntec memorandum. Therefore, these requirements constitute an improper application of MEP, are arbitrary and capricious, and violate Water Code § 13262(a), which requires WDR requirements shall be those *reasonably* required to protect beneficial uses and implement water quality objectives. • **Comment**: The balancing of these provisions in light of the Cal. Water Code section 13241 and State Board recommended factors in properly determining the MEP standard is especially critical with respect to standardized LID and hydromodification requirements, which would apply on a 'one-size fits all' basis throughout the County. See Cal. Water Code § 13241(b) ("Environmental characteristics of the hydrographic unit under consideration…"). Failure to engage in such balancing, which takes into account local conditions, including the need for housing and economic considerations and the degree to which a particular development constitutes infill and therefore is consistent with LID at a watershed scale, violates the state and federal provisions applicable to the Regional Boards exercise of permitting authority under its federally delegated powers. *See* Comments 2 and 3 above. • **Comment:** Application of LID to redevelopment projects is poor policy because (1) it will discourage infill because in many situations the requirements will not be capable of being met without reserving a great deal of project site area in newly created open space, (2) the costs of

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		implementation will not provide significant water quality benefit since most redevelopment and infill sites will discharge to already concrete flood control channels and/or are located in substantially built-out and impervious watersheds, and (3) lot-by-lot application of the requirements prevents adoption of IWRM and other more regional solutions that would better benefit water quality, particularly in the context of redevelopment, by providing some volume reduction BMPs for existing development that isn't served by BMPs. There are some types of LID techniques that can be implemented on small sites, such as planter boxes; however, for many redevelopment projects meeting a broad mandate to incorporate significant site design and LID practices will be technically and/or economically infeasible. Further, improving water quality of runoff from one lot that is being redeveloped will not substantially improve overall water quality unless the adjacent lots are also redeveloped. And so in this case, lot-by-lot imposition of these requirements do not make policy sense and do not result in substantial water quality improvements, but will result in substantial compliance costs. • **Comment**: The *Draft Permit* provides that the LID requirements are based on the State and Federal Antidegradation Policies (see C.19). However, the State and Federal Antidegradation Policies do not clearly support the imposition of the LID and hydromodification control requirements imposed in the *Draft Permit*. This finding does not clearly describe the connection between antidegradation requirements and the proposed LID requirements. *See*

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		Geosyntec memorandum. As a result, this finding is legally insufficient and is not supported by substantial evidence • **Comment:** The *Draft Permit* should be revised to limit application of LID requirements to projects of sufficient size, and with acceptable site and groundwater conditions to allow for feasible and beneficial implementation of site design BMPs and LID technologies. Further, LID requirements should be implemented at the planning and sub-watershed planning scale, and not on a lot-by-lot basis, and the bias against regional volume and treatment control BMPs should be eliminated from the *Draft Permit*. In addition to these revisions, we recommend replacing the LID and other hydromodification control standards proposed in the *Draft Permit* with the approach recommended in the Geosyntec memorandum. *See* summary description of potentially appropriate hydromodification control approach as recommended by Geosyntec in comment 15 below.
15. Numeric Hydromodification Criteria Pre- and Post-development volume, flow and duration matching and hydrograph matching	• The *Draft Permit* provides *all* New Development and Redevelopment (see above for definitions) must implement that hydrologic controls shall *minimize* changes in post-development flow rates, velocities and duration by *maintaining* the project's pre-development storm water runoff flow rate and durations. *Draft Permit,* Part 4, § E.II.1(a), p. 52. • The *Draft Permit* further	• **Comment:** The provision requiring flow rate and duration matching for all events is inconsistent with other provisions of the *Draft Permit* that allow some limited increases in post-development volume and flow duration, so long as, for example, an Ep=1 is maintained or Effective Impervious Area is limited to less than 5% of project area. Therefore, the *Draft Permit* is internally inconsistent, and the inconsistent provisions would be invalid. • **Comment:** Unlike other provisions of the *Draft Permit* which allow some limited post-development increases

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	recommends an "interim hydrologic control "for projects less than 50 acres requiring pre- v. post- development hydrograph (flow, volume and duration) matching for the 2-years, 24 hour storm event. *Draft Permit,* Part 4, § E.II.1.(e)(1), p. 53.	in volume, the flow rate and duration matching provision precludes any increase in volume for any storm event, or requires 100% infiltration or capture and re-use of all increased runoff volume, since that is the only way to *maintain* pre-development runoff flow rates and duration in the post-development conditions. A variety of sites will be unable to infiltrate or capture and reuse 100% of post-development increases in runoff volume due to soils conditions, groundwater conditions and/or land constraints. Therefore, in a variety of situations, compliance with this standard will be technically infeasible. . • **Comment:** In the limited situations in which flow rate and duration matching might be technically feasible, the costs associated with the land requirements necessary to provide sufficient infiltration and/or water storage to meet the requirements will be substantial. Therefore, economic infeasibility is a significant issue, particularly for infill and redevelopment project with significant land area constraints. • **Comment:** The *Draft Permit* appears to proposed the duration and flow matching standard as both a long-term and an interim 'one-size-fits all' hydromodification standard. As such, the standard is inconsistent with the recommendations of the scientific community for hydromodification control, which generally advocate an approach to hydromodification control that involves appropriate assessment and evaluation of local factors pertinent to channel destabilization at a sub-watershed level, including amount of impervious surface in a tributary

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		area, soils characteristics, runoff characteristics, channel characteristics, and project size. • **Comment:** Available scientific literature, such as the SCCRWP Study and Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) Hydromodification Management Report, indicate that flow and duration matching is not appropriate because some level of duration and flow increase is tolerated even by channels subject to destabilization, so pre- and post- development matching is not reasonably tailored to protect water quality as indicated by the best available science. • **Comment:** There is no evidence in the record that such a stringent standard is necessary to protect water quality and receiving water beneficial uses, particularly for sites that are (i) located in largely built-out and impervious watersheds, or (ii) that discharge into already degraded channels, pipes, concrete channels or other receiving waters that are not susceptible to material further destabilization, erosion and sedimentation due to their size, configuration, or geomorphological regime (including "reset" systems). • **Comment:** The *Draft Permit* sets forth an interim hydromodification standard for small projects (less that 50 acres) that requires hydrograph (flow, volume and duration) matching for the 2-year, 24-hour event. The Geosyntec memo raises serious concerns about the inadequacy of the interim standard for purposes of hydromodification control As a result, implementing this hydromodification control standard

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		could do more harm than good to natural drainage, • **Comment:** Application of flow, duration and hydrograph matching requirements to infill and redevelopment projects is poor policy because (1) it will discourage infill because in many situations the requirements will not be capable of being met without a great deal of land take , (2) the costs of implementation will not provide significant water quality benefit since most redevelopment and infill sites will discharge to already concrete flood control channels and/or are located in substantially built-out and impervious watersheds, and (3) lot-by-lot application of the requirements prevents adoption of IWRM and other more regional solutions that would better benefit water quality, particularly in the context of redevelopment, by providing some volume reduction BMPs for existing development that isn't served by BMPs. • **Comment.** As a result, these provisions are not based on the recommendations of scientific literature, and fail to consider technical feasibility, economic feasibility and effectiveness in light of substantial costs. As such, they are poor policy, an improper application of the MEP standard, are arbitrary and capricious, and violate Water Code 13262(a), which requires WDR requirements shall be those *reasonably* required to protect beneficial uses and implement water quality objectives. These standards should be therefore be eliminated from the *Draft Permit* as both interim and long-term requirements.

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		• **Comment:** The *Draft Permit* provision should be revised to eliminate the requirements for pre- v. post-development flow rate, duration and hydrograph matching for purposes of interim and long-term hydromodification control. Instead, as discussed in the Geosyntec memorandum, the *Draft Permit* should rely on development by co-permittees and/or larger project applicants of (i) an appropriate and geomorphically referenced local interim hydromodification control tool for application on a sub-watershed basis, and (ii) the development of a long-term hydromodification control standard based upon completion of the SMC study process (as currently recommended in the *Draft Permit*). Consistent with the approach recommended by Geosyntec, the Regional Board should cure the current deficiencies in the *Draft* Permit by providing for the co-permittees and/or larger project applicants to develop appropriate, local interim hydromodification control tools, applicable on a sub-watershed basis to all Development and Redevelopment projects within the sub-watershed to have the potential for substantial hydromodification impacts. These tools should be developed by preparing an HAS. As recommended by Geosyntec, the HAS should include an appropriate evaluation of pertinent local conditions on a sub-watershed basis, including total area of impervious surface, soils conditions, runoff characteristics, in-stream conditions and erosive flow potential and should apply the following protocol: First, an assessment of the physical sensitivity of the downstream system in light of tributary area characteristics should be conducted. If the

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		downstream areas are not sensitive to destabilization due to their configuration, the existing condition of impervious surface within the tributary watershed, the size of potential projects in the tributary watershed, in-stream conditions, erosive flow potential, or other pertinent factors, hydromodification control requirements should not be applicable to development within the related watershed. Second, for those sub-watersheds susceptible to destabilization as determined in step one, a tool should be developed for sizing hydromodification control BMPs pending completion of the SMC study process. This tool should be based on the relationship between percent impervious area soils type (infiltration rates) and runoff characteristics. The tool will then be applied to appropriate development and redevelopment projects in identified sensitive sub-watersheds to guide sizing of hydromodification control BMPs Appropriate projects would then implement the tool to determine appropriate sizing for hydromodification control BMPs necessary to protect sensitive down-stream systems from destabilization as a result of changes in flows. In addition to co-permittee HAS programs to develop such interim hydromodification control tools and standards, larger projects (sub-watershed or watershed scale) should be allowed to prepare their own HAS documents meeting similar requirements and using a similar protocol to that described above, allowing preparation by projects of sufficient scale of appropriate interim hydromodification control requirements. HAS studies prepared by co-permittees and other applicants should be

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		provided streamlined review by the Regional Board staff, without public review and comment, to maximize implementation of hydromodification controls during the interim period. See Comment 18 below regarding review and approval issues.
16. Numeric Hydromodification Criteria -- 5% limit on effective impervious surface area.	All New Development and Redevelopment (see above for definitions) – must reduce the % of effective impervious area to 5% of total project area. *Draft Permit,* Part 4 § E.1(b).	• **Comment:** There is no evidence in the record that this 5% maximum effective impervious area prescriptive standard is required to protect receiving waters susceptible to de-stabilization. The SCCRWP study and other cited documents do not recommend this prescriptive standard. *See* discussion in Geosyntec memorandum. The Regional Board has not provided substantial evidence to support that the 5% limit is necessary or reasonably tailored to avoid impacts to beneficial uses – why 5% as opposed to 10 or 15%? Therefore, the standard is arbitrary and capricious and violates Water Code § 13262(a) which requires WDR requirements shall be those *reasonably* required to protect beneficial uses and implement water quality objectives. • **Comment:** There is no evidence or discussion offered by the Regional Board that the 5% standard is necessary to protect water quality where sites discharge to waterbodies that are not subject to de-stabilization (concrete channels, large lakes, bays, estuaries, and large waterbodies subject to a "reset" geomorphological regime). In these situations, these measures will provide only a very small incremental water quality benefit. At the same time, there are extraordinary costs associated with the land necessary to these requirements,

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		particularly for constrained infill and redevelopment projects, creates major economic feasibility issues. Therefore, the standard as proposed is not cost-effective. • **Comment:** Application of this standard to infill and redevelopment projects is poor policy because (1) it will discourage infill because the requirements can't be met without a significant land take to accommodate infiltration and/or storage, (2) the costs of implementation will not provide significant water quality benefit since most redevelopment and infill sites will discharge to already concrete flood control channels, and (3) lot-by-lot application of the requirements prevents adoption of other more regional solutions that would better benefit water quality, particularly in the context of redevelopment, by providing some volume reduction BMPs for existing development that isn't served by BMPs. • **Comment:** The standard is duplicative, and potentially inconsistent with other numeric an narrative standards for hydromodification control set forth in the *Draft Permit*, such as maintaining a certain erosion potential (Ep). This creates internal inconsistency in the *Draft Permit*, which invalidates the inconsistent provisions. The inconsistency further assures that regulated parties will be unable to clearly establish compliance with the *Draft Permit*. • **Comment:** In light of the foregoing deficiencies, including technical and economic infeasibility, these provisions are an improper application of the MEP standard, constitute poor policy, are arbitrary and capricious, and violate

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		Water Code 13262(a), which requires WDR requirements shall be those *reasonably* required to protect beneficial uses and implement water quality objectives. • **Comment:** The *Draft Permit* provision should be revised to eliminate the 5% limitation on impervious surface, and should rely instead on the approach to hydromodification control outlined in the Geosyntec memorandum and summarized in comment 15 above.
17. Numeric Hydromodification Criteria—Ep = 1	The *Draft Permit* specifies that "hydrologic control in natural drainage systems shall be achieved by maintaining the Erosion Potential (Ep) in streams at a value of 1, unless an alternative value can be shown to be protective of the natural drainage systems from erosion, incision and sedimentation that can occur as a result of flow increases from impervious surfaces and damage stream habitat." *Draft Permit*, Part 4 §1.II.	• **Comment:** The approach for this criteria is more appropriately targeted than the other standards, in that it applies to sites discharging to natural drainage systems, but it should be further limited by specifying that it applies to natural drainage systems that are susceptible to destabilization, erosion or sedimentation, since not all natural systems as subject to those influences (*e.g.*, certain lakes, bays, estuaries, large rivers with a "reset" geomorphological regime). • **Comment:** There is no evidence in the record that maintaining an Ep=1 is required to protect receiving waters susceptible to de-stabilization. The SCCRWP study and other documents cited by the *Draft Permit* do not recommend this prescriptive standard. The Regional Board has not provided substantial evidence to support that Ep=1 is necessary to avoid impacts to beneficial uses – why Ep=1 instead of Ep = 1.5? The Regional Board has provided no documentation or information allowing evaluation of technical feasibility of implementing, or costs of complying with such a standard. • **Comment:** Requiring a single EP=1 standard to be met

General Issues	Specific Requirements/Concerns	Comments
		by all Development and Redevelopment projects is unrealistic. *See* Geosyntec memorandum. In developing the SCVURPPP hydromodification control program, the report, Chapter 3 found "it is unrealistic to believe that stream channels will behave such that a single Ep threshold value can be specified that, if exceeded, would always result in unstable channel conditions, or, conversely if less than would always be stable." As a result, the current standard is technically infeasible and is not effective or reasonably tailored. • **Comment:** Application of the Ep standard to infill and redevelopment projects is poor policy because (1) it will discourage infill because in many situations the requirements will not be capable of being met without a great deal of land take , (2) the costs of implementation will not provide significant water quality benefit since most redevelopment and infill sites will discharge to already concrete flood control channels and/or are located in substantially built-out and impervious watersheds, and (3) lot-by-lot application of the requirements prevents adoption of IWRM and other more regional solutions that would better benefit water quality, particularly in the context of redevelopment, by providing some volume reduction BMPs for existing development that isn't served by BMPs. • **Comment:** In light of the foregoing issues, the "one-size-fits all" application of a single prescriptive, uncritically determined Ep standard constitutes is technically and economically infeasible, and therefore an improper application

General Issues	Specific Requirements/Concerns	Comments
		of MEP, is contrary to scientific recommendations, is arbitrary and capricious and violates Water Code 13262(a) which requires WDR requirements shall be those *reasonably* required to protect beneficial uses and implement water quality objectives. • **Comment:** The *Draft Permit* provision should be revised to eliminate the requirement for Ep=1, and to implement the approach to hydromodification control outlined in the Geosyntec memorandum and summarized in comment 15 above.
18. Requirements for Best Management Practice Substitutions	The *Draft Permit* sets up several hurdles to approval of site-specific BMP programs or regional storm water mitigation programs in two different provisions: • BMP substitution Programs can be approved if (a) they will meet or exceed the objectives of the original BMP program in reduction of storm water pollutants, (b) there is evidence that the original program would be substantially more costly, and (c) the proposed alternative BMP program will be implemented within a similar period of time. The programs cannot be approved until public notice has been issued. *Draft Permit,* Part 4 § A.2.	• **Comment:** The distinction between BMP substitution programs and storm water mitigation programs is unclear, but appears to be immaterial. Both types of programs should be subject to the same approval process and standards. Like the BMP substitution program, storm water mitigation programs are programs to substitute in part or wholly for on-site post-construction BMP requirements. To avoid complexity and confusion, and to streamline implementation and encourage development of regional storm water mitigation plans, which can better benefit water quality, the procedures should be the same for approval of both types of programs, they should be simplified, and they should also be applicable to approval of HAS studies designed to develop interim hydromodification control measures and standards. Specifically, for all three of these programs, the *Draft Permit* should be revised as follows: o Approval of the alternative programs by the Executive Officer should be sufficient. The

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	• Regional and Redevelopment Area Storm Water Mitigation programs must be approved by the Regional Water Board (rather than the Executive Officer), if the program will (a) result in equivalent or improved storm water quality; (b) protect stream habitat, (c) promote cooperative problem solving, (d) be fiscally sustainable and have secure funding, and (e) be complete in four years, including construction. *Draft Permit*, Part 4 §E.7. In addition to these hurdles, the *Draft Permit* as written fails to include provisions allowing for the preparation and approval of HAS studies by co-permittees and project applicants for purposes of determining appropriate interim hydromodification control measures that should be applicable to particular subwatersheds within jurisdictions.	Executive Officer and Regional Board staff have the experience and are competent to approve programs and determine their sufficiency in light of MS4 permit requirements, and are vested with responsibility for implementing all other provisions of the permit. o Public notice and review of substitute programs is unnecessary, and is costly. The *Draft Permit* requires consideration of BMP programs, hydromodification impacts, and water quality mitigation during the CEQA process, (p. 62), and, as a practical matter, these programs will primarily be developed in the context of CEQA review. CEQA already provides ample opportunity for public review and comment on storm water mitigation, hydromodification control, and BMP programs. o Since large landowners and developers of sites greater than 50 acres must prepare special HAS studies, they should be able to independently propose and apply for Regional Board approval of alternative BMP and hydromodification control programs independently of the co-permittee. o The only measuring stick for approving alternative BMP programs should be whether the programs meet or exceed the requirements set forth in the MS4 permit. Comparison to the original BMP program is irrelevant. As long as a particular

General Issues	Specific Requirements/Concerns	Comments
		program meets or exceeds all requirements of the MS4 permit, it will have the same water quality benefit as site-by-site compliance and should be approved by the Regional Board. ○ The maximum time limit for implementation of a regional program (4 years) should be eliminated, and instead, the time limit for implementation should be tied to construction phasing. The projects that will most benefit from regional storm water mitigation programs are large projects with long-term development horizons (typically far greater than 4 years). The key requirement for timing of implementation is to assure that treatment BMPs and hydromodification controls are in place before storm drains are connected to outfalls. Therefore, the *Draft Permit* should provide that alternative BMP and hydromodification control programs must be implemented in a manner so as to assure construction and operation of BMPs and treatment of runoff prior to connection of storm drains.
19. Seasonal grading prohibitions	No grading allowed between October 1 – April 15 for construction projects in areas of high erosivity or receiving water impairment or sensitive habitat (hillsides with slopes 20% or steeper prior to land disturbance, projects directly discharging to waterbody listed on 303(d) list for siltation or sediment	• **Comment:** Under State law and guidance, the State Board sets policy and regulation for discharges from construction sites in the General Construction Permit, for purposes of establishing a consistent approach to water quality on a statewide basis. It is inappropriate for the Regional Board to adopt additional regulations for such sites that create different standards that are more expensive to comply with,

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	and projects within or adjacent to ESA). *Draft Permit*, Part 4., F.1.	and thereby create competitive disadvantages for construction within a particular jurisdiction. • **Comment:** If these additional requirements for construction site runoff are imposed, they must be imposed via a proper exercise of discretion and consideration of all factors relevant to achievement of MEP. Therefore, the Regional Board must evaluate economic and technical feasibility of the proposed measures, and cost-effectiveness of the measures before they are imposed in the MS4 permit. *See* Comments 2 and 3 above. • **Comment:**. The Regional Board also must analyze adverse environmental impacts of these measures. *See* next Comment and the Comment regarding CEQA above. • **Comment:** There is no evidence provided that a seasonal grading restriction is required to protect water quality from construction site runoff during the wet season. The Regional Board seems to be making the unsupported assumption that projects will not implement adequate SWPPPs. This is an unreasonable assumption that is not supported by available documentation and evidence upon which to base this requirement. There is no reference to an unusual number of NOVs issued as a result of wet season grading, and no indication that wet season grading contributes in a material way to sediment loads in receiving waters in wet weather, particularly in the very alluvial systems of Ventura County, which are naturally subject to heavy sediment loads during the rainy seasons in a baseline condition, regardless of

General Issues	Specific Requirements/Concerns	Comments
		construction activity. Conversely, in light of high background sediment loads in Ventura County, there is no evidence that the proposed restriction will be effective in improving receiving water quality substantially or in a cost-effective manner. • **Comment:** It is unreasonable and extremely expensive to prohibit wet season grading entirely. For example, using current land values in Ventura County of $500,000 to $1,000,000/acre the carrying-cost alone for a project proponent ranges from $62,500 and $125,000/acre over a six month period. *See* Attachment B for calculations. Despite these relatively high costs associated with implementation of the grading restriction, the restriction will only address from runoff water quality from construction sites employing inadequate SWPPPs and affected by precipitation and average of 23 to 28 days during the approximately 195-day rainy season period. In light of the regulated community targeted, the restriction is not cost-effective. • **Comment:** The prohibition will also result in adverse air quality impacts because wet season grading is often preferred for dust control reasons. • **Comment:** In addition, some areas of Ventura County have specific avian breeding and nesting habitat avoidance criteria. Such a ban on grading for the time period of October through mid-April would effectively prevent any development from occurring, as a winter or "rainy season" grading ban forces grading to occur during known nesting and breeding

General Issues	Specific Requirements/Concerns	Comments
		seasons. As a result of these deficiencies, the proposed grading restrictions are an improper application of the MEP standard, are arbitrary and capricious in and violate Water Code § 13262(a) which requires WDR requirements shall be those *reasonably* required to protect beneficial uses and implement water quality objectives. • **Comment:** The General Construction Permit already requires an effective combination of sediment and erosion control measures, and other BMPs must be deployed taking into account site specific conditions, project activities *and weather conditions*. As a result, under the General Construction Permit, more stringent BMPs should be deployed during the wet season to protect receiving water quality. As recommended in the Geosyntec memorandum, the *Draft Permit* should be revised to expressly reinforce the importance during the wet season of (i) deploying more stringed pollutant controls, (ii) increasing wet weather inspection frequency, (iii) reducing the amount of time allowed for corrective action and follow up inspections to assure prompt corrective action in the wet season, and (v) limiting the amount of area left exposed and un-stabilized for an extended period of time during periods of predicted rain.
20. Numeric Limits -- Construction Sediment limits	The *Draft Permit* provides that a "Grading Variance" allowing wet season grading on certain sites can be obtained only if the Permittee can demonstrate that runoff will not contain TSS greater than 100 mg/L, or turbidity greater than 50 NTU. *Draft*	• **Comment:** To obtain a grading variance, the applicant must show that a particular construction site is unlikely to contribute sediment to receiving water in excess of stated numeric restrictions. Contrary to the Blue Ribbon Report, this approach amounts to banning grading unless certain numeric

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	Permit, Part 4 § F.1(b)(1), p. 64. To the extent that these MALs can only be met by using polymers, as the Blue Ribbon Panel Report suggests, and polymers result in alteration of natural loads, then the MALs are in derogation of the federal Clean Water Act, which defines "pollution" as the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of the water. 33 U.S.C. § 1362(19). The introduction of polymers and resulting "pollution" of the waters also runs contrary to the section 13241 balancing factors in that it actively corrupts the physical integrity of the waters.	limitations can be met, fails to perform recommended studies regarding baseline sediment production and discharge under natural conditions. Depriving highly alluvial systems of all sediment in runoff can create "hungry" water that results in greater erosion impacts in natural stream channels, and therefore numeric limits should not be mandated without reference to existing sediment discharge conditions. • **Comment**: To the extent that these MALs can only be met by using Advanced Treatment (polymers), as the Blue Ribbon Panel Report suggests, these chemical substances result in alteration of natural loads in derogation of the federal Clean Water Act, which defines "pollution" as the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of the water. 33 U.S.C. § 1362(19). The introduction of polymers and resulting "pollution" of the waters also is an improper application of MEP in that it runs contrary to the section 13241 balancing factors in that it actively corrupts the physical integrity of the waters. • **Comment:** The imposition of numeric TSS and turbidity limits seeking a wet season prohibition variance are contrary to the findings and recommendations of the Blue Ribbon Panel Report, which set forth at least 5 pre-requisite studies and conditions that need to precede imposition of numeric limits on construction site runoff, including consideration of issues associated with toxicity associated with active treatment systems, issues associated with long-term use of chemicals and consideration of runoff flow and peak

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		volume. See *Blue Ribbon Report,* p. 16-17. None of these prerequisite studies or conditions have been performed by the Regional Board, and therefore the imposition of numeric limits is inappropriate and contrary to State Board policy and the findings and recommendations of the Blue Ribbon Panel. • **Comment**: An effective set of erosion and sediment control BMPs could accomplish this goal without requiring advanced treatment; however, based on the way that the *Draft Permit* is written, that option, even if it would be adequately protective of water quality, taking into account background levels, would not be permitted. Therefore, we recommend the Regional Board cure this arbitrary and capricious provision by implementing the recommendations of the Geosyntec memorandum for construction site runoff water quality controls.
21. Seasonal Paving Restrictions	Paving and repaving activities are prohibited during periods of rainfall or *predicted rainfall.*	• **Comment**: This language is too vague to be complied with, and therefore violates substantive due process requirements. Because paving and repaving are restricted even when the smallest chance of rain is predicted (*e.g.,* 1%), the restriction is not reasonably tailored as necessary to protect water quality in violation of Cal. Water Code section 13263(a). Recommended BMPs for incorporation into construction site SWPPPs already require consideration of precipitation conditions before conducting this activity, so this requirement in the *Draft Permit* should be eliminated. The *Draft Permit* deprives the regulated community of due process when the conditions and requirements are so vaguely stated that its

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		provisions do not provide the regulated community with adequate notice of what is required to comply with the *Draft Permit*, and, conversely, fails to provide adequate notice as to what may constitute a violation of the *Draft Permit* once it is adopted. • It is a basic concept of law that "Notice is fundamental to due process." 7 Witkin § 638 (10th ed. 2006). The lack of an adequate definition constitutes improper notice to the regulated community in violation of due process. Cal. Const. Art. I, §§ 7, 15; Cal. Gov. Code § 11340 *et seq*. A "standard that has no content is no standard at all and is unreasonable." *Wheeler* v. *State Bd. of Forestry* 144 Cal.App.3d 522, 527-528 (1983). Thus, in order to provide the regulated community with sufficient notice of what is required to comply with the *Draft Permit* and what will constitute a violation of the *Draft Permit* so as to satisfy basic due process standards, the Revised *Draft Permit* should be revised to provide further clarification regarding a number of terms and conditions. • *See* also comments above regarding seasonal grading restrictions and potential impacts on air quality and the nesting/breeding season of certain avian species. As a result of these deficiencies, the provisions constitute and improper application of the MEP standard, are arbitrary and capricious and are not reasonably tailored to protect water quality in violation of Cal. Water Code §13263(a). To cure these deficiencies, we recommend revising these provisions as recommended in the Geosyntec memorandum.

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22. BMP requirements for very small lots and/or projects	• All development or redevelopment projects equal to 1 acre or greater of disturbed areas must implement post-construction treatment controls. *Draft Permit,* Part 4, E.III.1.(b). • All industrial parks and commercial strip malls with 5,000 (rather than 100,000) ft^2 of surface area must implement post-construction BMPs. *Draft Permit,* Part 4 §e.III. I.(c). • During construction of single-family hillside homes (property located in an area with known erosive soil conditions, where the development contemplates grading on any natural slope that is 20% or greater and where grading contemplates cut or fill slopes), homeowners must take measures to conserve natural areas, protect slopes and channels, provide storm drain stenciling and signage, divert roof runoff and surface flow to vegetated areas before discharge unless such diversion would promote slope instability. *Draft Permit*, Part 4, § E. III. 1 (a).	• **Comment:** EPA stormwater regulations determined that regulation of small grading projects less than one acre is typically not necessary for adequate protection of water quality. 40 CFR 122.26. There is no evidence in the documents provided that control of such small construction sites, is necessary to protect water quality. As a result, the requirements are arbitrary and capricious and violate Water Code § 13263(a) which requires WDR requirements shall be those *reasonably* required to protect beneficial uses and implement water quality objectives. Further, it is unclear why certain sites, like strip malls, are subject to these requirements while other sites that have similar characteristics are not subject to these requirements. The Regional Board has failed to adequately provide why certain sites are subject to these requirements while other are not. As a result, the requirements are arbitrary and capricious in and violate Water Code § 13262(a) which requires WDR requirements shall be those *reasonably* required to protect beneficial uses and implement water quality objectives. • **Comment:** The imposition of such requirements is not an effective approach to storm water regulation of these types of sites because important site-specific considerations are not taken into account, and these conditions will impose significant costs as compared to the water quality benefits. A better approach to regulation of these types of sites is through ordinances that require preparation of an erosion control plan.

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Attachment "A"

Attachment A

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Permit Requirement	**Complies with Clean Water Act and Applicable Legal Standard (Appropriate Balancing Consistent with Prescribed Factors and Legislative Goals)**	**Inconsistent with Clean Water Act and Applicable Legal Standard (Failure to Balance Consistent with Prescribed Factors and Legislative Goals)**
Part 1 – Discharge Prohibitions		
Part 1.A: Prohibitions – Discharges		
1.A.1. - Discharges into and from the MS4 in a manner causing or contributing to a condition of pollution, contamination or nuisance (as defined In Cal. Water Code § 13050), in waters of the State are prohibited.		X
1.A.2. - Discharges from the MS4, which cause or contribute to exceedances of receiving water quality objectives for surface waters are prohibited.	X[1]	
1.A.3. - Discharges to the MS4 not covered by an NPDES individual or general permit are prohibited.	X[2]	
Part 1.B: Prohibitions – Non-Storm Water Discharges		
1.B.1. - The Permittees shall effectively prohibit non-storm discharges into the MS4 and watercourses, except where such discharges originate from a State, federal, or other source which they are pre-empted by State or Federal law from regulating.	X[3]	

[1] 40 CFR 122.44(d).
[2] 40 CFR 122.26(b)(1); 122.26(d)(2)(iv)(b).
[3] 40 CFR 122.26(b)(1); 122.26(d)(2)(iv)(b).

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1.B.2 - The Permittees shall effectively prohibit non-storm discharges into the MS4 and watercourses, except where such discharges fall within specific categories, are not a source of pollutants, and meet all conditions where specified by the Regional Water Board Executive Officer.	X[4]	
1.B.3. - If the Regional Water Board Executive Officer determines that any of the preceding categories of non-storm water discharges are a source of pollutants, the Permittee shall either: (a) Prohibit the discharge from entering the MS4; or (b) Authorize the discharge category and require implementation of appropriate or additional BMPs to ensure that the discharge will not be a source of pollutants; or (c) Require or obtain coverage under a separate NPDES permit for discharge into the MS4.	X[5]	
1.B.4. - The Regional Water Board Executive Officer, after providing the opportunity for public comment, may authorize or prohibit the discharge of other categories of non-storm water, after consideration of antidegradation policies and upon presentation of evidence.		X
Part 2 – Receiving Water Limitations		
2.1 - Discharges from the MS4 that cause or contribute to a violation of water quality standards are prohibited.	X[6]	
2.2 - Discharges from the MS4 of storm water, or non-storm water, for which a Permittee is responsible, shall not cause or contribute to a condition of nuisance.	X[7]	

[4] 40 CFR 122.26(b)(1); 122.26(d)(2)(iv)(b).
[5] 40 CFR 122.26(b)(1); 122.26(d)(2)(iv)(b).
[6] 40 CFR 122.44(d).
[7] 33 USC 1342(p)(3)(B).

2.3 - The Permittee shall comply with the Order through timely implementation of control measures and other actions to reduce pollutants in the discharges in accordance with this Order. This Order shall be implemented to achieve compliance with receiving water limitations. If exceedance(s) of water quality objectives or water quality standards persist, notwithstanding implementation of the Order and its components and other requirements of this Order, the Permittee shall assure compliance with discharge prohibitions and receiving water limitations by complying with a specific procedure as follows: (a) Upon a determination by either the Permittee(s) or Regional Water Board that discharges are causing or contributing to a violation of applicable water quality standards, the Permittee shall promptly notify and thereafter submit a Receiving Water Limitations (RWL) Compliance Report to the Regional Water Board Executive Officer for approval. The RWL Compliance Report shall be included with the Annual Report, unless the Regional Water Board directs an earlier submittal. (b) The RWL Compliance Report shall describe BMPs currently being implemented and the additional BMPs that will be implemented, to prevent or reduce any pollutants that are causing or contributing to the exceedences of water quality standards. (c) The RWL Compliance Report shall include a BMP implementation schedule. (d) Within 30 days following approval of the RWL Compliance Report the approved, modified suite of BMPs, implementation schedule, and any additional monitoring required shall be implemented. (e) Modifications to the RWL Compliance Report, required by the Regional Water Board shall be submitted to the Regional Water Board Executive Officer within 30 days of notification.		X

(f) Implement the revised monitoring program according to the approved schedule.		
2.4 - If a member of the public has documentary evidence of RWL violations, the member of the public may petition the Regional Water Board Executive Officer in writing to review the alleged violation within 60 days to determine if Part 2 of this Order was violated.		X
2.5 - As long as the Permittee complies with the procedures set forth above to comply with the receiving water limitations, is in compliance with the MALs, and is implementing this Order, the Permittee does not have to repeat the procedure for continuing or recurring exceedences of the same water quality standard(s) unless directed to by the Regional Water Board to develop and implement additional BMPs.		X
Part 3 – Stormwater Quality Management Program Implementation		
Part 3.A: General Requirements		
3.A.1. - Each Permittee shall, at a minimum, adopt and implement applicable terms of this Order within its jurisdictional boundaries. The Principal Permittee shall be responsible for program coordination as described in this Order as well as compliance with applicable portions of the permit within its jurisdiction. This Order shall be implemented no later than (60 days from Order adoption), unless a later date has been specified for a particular provision in this Order and provided the Regional Administrator of the U.S.		X

EPA has no objections.		
3.A.2. - Each Permittee shall comply with the requirements of 40 CFR 122.26(d)(2) and implement programs and control measures so as to reduce the discharges of pollutants in storm water to the MEP and achieve water quality objectives.	X[8]	
3.A.3. - Each Permittee shall implement programs and measures to comply with the TMDLs' WLAs for the MS4 as follows: (1) Dry Weather Discharges- achieve the concentration or load based numerical limitation for dry weather discharge identified in this Order (Part 6. Total Maximum Daily Load Provisions) through effective prohibition of dry weather discharges. (2) Wet Weather Discharges- achieve the concentration or load based numerical limitation or its BMPs expression for wet weather discharge identified in the Order (Part 6. Total Maximum Daily Load Provisions), or implement the BMPs specifically identified in the Order which have a reasonable expectation, when fully implemented, to achieve the WLAs in the Order (Part 6. Total Maximum Daily Load Provisions).		X
Part 3.B: Legal Authority		
3.B.1.(a) - Permittees shall possess the necessary legal authority to prohibit, including, but not limited to illicit connections and illicit discharges, and to remove illicit connections.	X[9]	
3.B.1.(b) - Permittees shall possess the necessary legal authority to prohibit, including, but not limited to the discharge of non-storm water to the MS4 from: (1) Washing or cleaning of gas stations, auto repair garages, or other types of		X

[8] 40 CFR 122.26(d).
[9] 40 CFR 122.26(d)(2)(i)(B).

automotive service facilities. (2) Mobile auto washing, carpet cleaning, steam cleaning, sandblasting and other such mobile commercial and industrial operations. (3) Areas where repair of machinery and equipment which are visibly leaking oil, fluid or antifreeze, is undertaken. (4) Storage areas for materials containing grease, oil, or other hazardous substances, and uncovered receptacles containing hazardous materials. (5) Swimming pool(s) that have a concentration greater than a specific amount of certain chemicals: (6) Swimming pool filter backwash. (7) Decorative fountains and ponds. (8) Industrial/ Commercial areas, including restaurant mats. (9) Concrete truck cement, pumps, tools, and equipment washout. (10) Spills, dumping, etc. (11) Stationary and mobile pet grooming facilities. (12) Trash container leachate.		
3.B.2.(a) - The Permittees shall possess adequate legal authority to control through interagency agreement, the contribution of pollutants from one portion of the MS4 to another portion of the MS4.	X[10]	
3.B.2.(b) - The Permittees shall possess adequate legal authority to require persons within their jurisdiction to comply with conditions in the Permittees' ordinances, permits, contracts, model programs, or orders (i.e. hold dischargers to its MS4 accountable for their contributions of pollutants and flows).	X[11]	
3.B.2.(c) - The Permittees shall possess adequate legal authority to utilize		X[12]

[10] 40 CFR 122.26(d)(2)(i)(D).
[11] 40 CFR 122.26(d)(2)(i)(E).

enforcement measures (e.g., stop work orders, notice of violations, fines, referral to City, County, and/ or District Attorneys, referral to strikeforces, etc.) by ordinances, permits, contracts, orders, administrative authority, and civil and criminal prosecution.		
3.B.2.(d) - The Permittees shall possess adequate legal authority to control pollutants, including potential contribution in discharges of storm water runoff associated with industrial activities, including construction activities to its MS4, and control the quality of storm water runoff from industrial sites, including construction sites.	X[13]	
3.B.2.(e) - The Permittees shall possess adequate legal authority to carry out all inspections, surveillance and monitoring procedures necessary to determine compliance and non-compliance with permit conditions including the prohibition on illicit discharges to the MS4.	X[14]	
3.B.2.(f) - The Permittees shall possess adequate legal authority to require the use of control measures to prevent or reduce the discharge of pollutants to achieve water quality objectives.	X[15]	
3.B.2.(g) - The Permittees shall possess adequate legal authority to require that Treatment Control BMPs be properly operated and maintained.	X[16]	
3.B.3. - Each Permittee has adopted a Storm Water Quality Ordinance based upon a countywide model. Each Permittee will update its Storm Water Quality Ordinance to be able to enforce all requirements of this Order, no later than (6 months from adoption date).		X
3.B.4 - Each Permittee shall submit no later than (180 days after adoption		X

[12] Not specifically required by 40 CFR 122.26(d)(2)(i)(A)-(F).
[13] 40 CFR 122.26(d)(2)(i)(A).
[14] 40 CFR 122.26(d)(2)(i)(F).
[15] 40 CFR 122.44(d).
[16] 40 CFR 122.41(e).

date), a statement by its legal counsel that the Permittee has obtained and possesses all necessary legal authority to comply with this Order through adoption of ordinances and/ or municipal code modifications.		
Part 3.C – Fiscal Resources		
3.C.1. - The Permittees shall allocate all necessary funds to implement the activities required to comply with the provisions of this Order.	X[17]	
Part 3.D: Modifications/Revisions		
3.D.1. - No later than (90 days after Regional Water Board adoption of this Order) each Permittee shall modify storm water management programs, protocols, practices, and municipal codes to make them consistent with the requirements herein.	X	
Part 3.E: Designation and Responsibilities of the Principal Permittee		
3.E.1. - The Ventura County Watershed Protection District is hereby designated as the Principal Permittee. As such, the Principal Permittee shall: (a) Participate in the County Environmental Crimes Task Force. (b) Coordinate and facilitate activities necessary to comply with the requirements of this Order, but is not responsible for ensuring compliance of any individual Permittee. (c) Coordinate permit activities among Permittees and act as liaison between Permittees and the Regional Water Board on permitting issues. (d) Provide technical and administrative support for committees that will be organized to implement this Order and its requirements. (e) Evaluate, assess, and synthesize the results of the monitoring program and the effectiveness of the implementation of BMPs.		X

[17] 40 CFR 122.26(d)(2)(vi). However, as noted throughout this document a number of the provisions of the Order go beyond the federal MS4 requirements.

(f) Convene the Management Committees (MCs) and subcommittees constituted pursuant to Part F, below, upon designation of representatives. (g) Implement the Countywide Monitoring Program required under the Order and evaluate, assess and synthesize the results of the monitoring program. (h) Provide personnel and fiscal resources for the collection, processing and submittal to the Regional Water Board of monitoring and annual reports, and summaries of other reports required under this Order. (i) Comply with the "Responsibilities of the Permittees" in Part 3.F., below.		
Part 3.F: Responsibilities of the Permittees		
3.F.1. - Each Permittee is required to comply with the requirements of this Order applicable to discharges within its boundaries (see Findings- Permit Coverage D.1 and D.2) and not for the implementation of the provisions applicable to the Principal Permittee or other Permittees. Each Permittee shall: (a) Comply with the requirements of this Order and any modifications thereto. (b) Coordinate among its internal departments and agencies, as necessary, to facilitate the implementation of the requirements of this Order applicable to such Permittees in an efficient and cost-effective manner. (c) Participate in intra-agency coordination (e.g., Planning Department, Fire Department, Building and Safety, Code Enforcement, Public Health, Parks and Recreation, and others) necessary to successfully implement the provisions of this Order. (d) Report, in addition to the Budget Summary, any supplemental dedicated budgets for the same categories. (e) Be represented at all Management Committee Meetings, which will meet at least once a month. (f) Be represented at all subcommittee meetings. Currently there are 5		X

subcommittees which were functional during the second permit term:		
Part 4 – Special Provisions (Baseline)		
Part 4.A: General Requirements		
4.A.1. - This Order and the provisions herein, are intended to develop, achieve, and implement a timely, comprehensive, cost-effective storm water pollution control program to reduce the discharge of pollutants in storm water to the MEP and achieve water quality objectives for the permitted areas in the County of Ventura.	X[18]	
4.A.2. – (BMP Substitution) The Regional Water Board Executive Officer may approve any site-specific BMP substitution upon petition by a Permittee(s) and after public notice, if the Permittee can document that: (a) The proposed alternative BMP or program will meet or exceed the objective of the original BMP or program in the reduction of storm water pollutants. (b) The fiscal burden of the original BMP or program is substantially greater than the proposed alternative and does not achieve a substantially greater improvement in storm water quality. (c) The proposed alternative BMP or program will be implemented within a similar period of time.		X
Part 4.B: Watershed Initiative Participation		
4.B.1. - The Principal Permittee consents to participate in appropriate water quality meetings for watershed management planning, including but not limited to the following: (a) Southern California Stormwater Monitoring Coalition (SMC). (b) SMC Regional Monitoring Programs. (c) Southern California Regional Bioassessment Program.		X

[18] 40 CFR 122.44(d).

(d) Calleguas Creek Watershed Management Plan. (e) Santa Clara River Enhancement and Management Plan. (f) Steelhead Restoration and Recovery Plan. (g) Wetlands Recovery Project. (h) Ventura County Task Force of the Wetlands Recovery Project. (i) Southern California Bight Project. (j) Other appropriate watershed planning groups.		
4.C: Public Information and Participation Program		
The Principal Permittee shall implement a Public Information and Participation Program (PIPP) that includes, but is not limited to, the requirements listed in this section. The Principal Permittee shall be responsible for developing and implementing the PIPP, and shall coordinate with Permittees to implement specific requirements. The objectives of the PIPP are as follows: • To measurably increase the knowledge of the target audience about the MS4, the adverse impacts of storm water pollution on receiving waters and potential solutions to mitigate the impacts. • To measurably change the waste disposal and storm water pollution generation behavior of target audiences by encouraging implementation of appropriate solutions. • To involve and engage communities in Ventura County to participate in mitigating the impacts of storm water pollution.	X[19]	
4.C.1. – Residential Program		
4.C.1.(a) - Each Permittee shall label all storm drain inlets that they own with a legible "no dumping" message. In addition, signs with prohibitive language discouraging illegal dumping shall be posted at designated public access		X

[19] 40 CFR 122.26(d)(2)(iv)(B)(6); 122.26(d)(2)(iv)(D)(4).

points to creeks, other relevant water bodies, and channels. Signage and storm drain messages shall be legible and maintained.		
4.C.1.(b) - Each Permittee will identify staff who will serve as the contact(s) person for reporting clogged catch basin inlets and illicit discharges/ dumping, faded or missing catch basin labels, and general storm water management information. Permittees shall include this information, updated by July 1 of each year, in public information media such as the government pages of the telephone book, and internet web sites. The Principal Permittee shall compile a list of the general public reporting contacts submitted by all Permittees and make this information available on the web site (http://www.vcstormwater.org/contact.htm) and upon request. Each Permittee is responsible for providing current, updated information to the Principal Permittee.		X
4.C.1.(c) – Public Outreach/Education (1) The Principal Permittee shall implement the following activities: (A) Conduct a Storm Water pollution prevention advertising campaign. (B) Conduct Storm Water pollution prevention public service announcements. (C) Distribute storm water pollution prevention public education materials to: (i) Automotive parts stores; (ii) Home improvement centers/ lumber yards/ hardware stores; and (iii) Pet shops/ feed stores. (D) Public education materials shall include, but are not limited to information on the proper disposal, storage, and use of: (i) Vehicle waste fluids; (ii) Household waste materials; (iii) Construction waste materials; (iv) Pesticides, herbicides, and fertilizers (including integrated pest management practices-IPM); (v) Green waste (including lawn clippings and leaves); and		X[20]

[20] Federal MS4 permit requirements do not place specific curricular requirements on the education/outreach programs. *See* 40 CFR 122.26(d)(2)(iv)(D)(4).

(vi) Animal wastes. (E) Organize watershed Citizen Advisory Groups/ Committees to develop effective methods to educate the public about storm water pollution no later than (365 days after the adoption of this Order). (F) Organize events targeted to residents and population subgroups; and (G) Maintain the Countywide storm water website (www.vcstormwater.org), which shall include educational material listed in the preceding section C.1(c)(1)(C). (2) The Principal Permittee shall develop a strategy to educate ethnic communities through culturally effective methods. Details of this strategy should be incorporated into the PIPP, and implemented, no later than (180 days after the adoption of this order). (3) Each Permittee shall continue the existing outreach program to residents on the proper disposal of litter, green waste, pet waste, proper vehicle maintenance, lawn care and water conservation practices. (4) Each Permittee shall conduct educational activities within its jurisdiction and participate in countywide events. (5) The Permittees shall make a minimum of 10 million impressions per year to the general public related to storm water quality, with a minimum of 5 million impressions via newspaper, local TV access, local radio and/ or internet access. (6) The Principal Permittee, in cooperation with the Permittees, shall provide schools within each School District in the County with materials, including, but not limited to, videos, live presentations, and other information necessary to educate a minimum of 50 percent of all school children (K-12) every 2 years on storm water pollution. Pursuant to AB 1721 (2005), beginning January 1, 2007, the Permittees, in lieu of providing educational materials/ funding to School Districts in the County, may opt to provide an equivalent		

amount of funds or fraction thereof to the Environmental Education Account established within the State Treasury. This option requires the written approval of the Regional Water Board Executive Officer. (7) Each Permittee shall provide the contact information for their appropriate staff responsible for storm water public education activities to the Principal Permittee and contact information changes no later than 30 days after a change occurs. (8) The Permittees shall develop and implement a strategy to measure the effectiveness of in-school educational programs. The protocol shall include assessment of students' knowledge of the adverse impacts of storm water pollution and solutions before and after educational programs are conducted. The strategy shall be implemented no later than (180 days after the adoption of this Order). (9) The Permittees shall develop and implement a behavioral change assessment strategy no later than (180 days after the adoption of this Permit), in order to ensure that the PIPP is demonstrably effective in changing the behavior of the public. The strategy shall be developed based on current sociological data and studies.		
4.C.1.(d) – Pollution Specific Outreach The Principal Permittee, in cooperation with Permittees, shall coordinate to develop outreach programs that focus on the watershed-specific pollutants identified in Attachment "B" (Pollutants of Concern) no later than (180 days after the adoption of this Order). Metals may be appropriately addressed through the Industrial/ Commercial Facilities Program (e.g. the distribution of educational materials on appropriate BMPs for metal fabrication and recycling facilities that have been identified as a potential source). Region-		X[21]

[21] Federal MS4 permit requirements do not place specific curricular requirements on the education/outreach programs. *See* 40 CFR 122.26(d)(2)(iv)(D)(4).

wide pollutants may be included in the Principal Permittee's mass media outreach program.		
4.C.2.(a) – Corporate Outreach The Permittees shall develop and implement a Corporate Outreach program to educate and inform corporate managers about storm water regulations and BMPs. The program shall target a minimum of four RGO franchisers and cover a minimum of 80% of RGO franchisees in the county, four retail automotive parts franchisers, two home improvement center franchisers and six restaurant franchisers. Corporate Outreach for all target facilities shall be conducted not less than twice during the term of this Order, with the first outreach contact to begin no later than (2 years after the adoption of this Order). At a minimum, this program shall include: (A) Conferring with corporate management to explain storm water regulations. (B) Distribution and discussion of educational material regarding storm water pollution and BMPs, and provide managers with recommendations to facilitate employee and facility compliance with storm water regulations. (2) Corporate Outreach for all RGOs, automotive parts stores, home improvement centers and restaurant chains corporations shall be conducted not less than twice during the term of this Order, with the first outreach contact to begin no later than (2 years after the adoption of this Order).		X[22]
4.C.2.(b) – Business Assistance Program The Permittees shall implement a Business Assistance Program to provide technical resource assistance to small businesses to advise them on BMPs implementation to reduce the discharge of pollutants in storm water. The		X[23]

[22] Federal MS4 permit requirements do not place specific curricular requirements on the education/outreach programs. *See* 40 CFR 122.26(d)(2)(iv)(D)(4).
[23] Federal MS4 permit requirements do not place specific curricular requirements on the education/outreach programs. *See* 40 CFR 122.26(d)(2)(iv)(D)(4).

Program shall include: (1) On-site technical assistance or consultation via telephone or e-mail to identify and implement storm water pollution prevention methods and best management practices. (2) Distribution of storm water pollution prevention education materials to operators of auto repair shops, car wash facilities (including mobile car detailing), mobile carpet cleaning services, commercial pesticide applicator services and restaurants.		
Part 4.D: Industrial/Commercial Facilities Program		
Each Permittee shall require implementation of pollutant reduction and control measures at industrial and commercial facilities, with the objective of reducing pollutants in storm water. Except where specified otherwise in this Order, pollutant reduction and control measures may be used alone or in combination, and may include Structural Treatment Control, Source Control BMPs, and operation and maintenance procedures, which may be applied before, during, and/ or after pollution generating activities. At a minimum, the Industrial/ Commercial Facilities Control Program shall include requirements to: (1) track, (2) inspect, and (3) ensure compliance with municipal ordinances at industrial and commercial facilities that are critical sources of pollutants in storm water.		X
4.D.1.(a) – Inventory of Critical Sources. (a) Each Permittee shall maintain a watershed-based inventory or database of all facilities within its jurisdiction that are critical sources of storm water pollution. Critical Sources to be tracked are summarized below, and specified in Attachment "D":	X[24]	

[24] 40 CFR 122.26(d)(2)(ii).

(1) Commercial Facilities. (A) Restaurants. (B) Automotive service facilities. (C) RGOs and automotive dealerships. (D) Nurseries and nursery centers. (2) U.S. EPA Phase I, II Facilities. (3) Other Federally-mandated Facilities [as specified in 40 CFR 122.26(d)(2)(iv)(C)]. (A) Municipal landfills. (B) Hazardous waste treatment, disposal, and recovery facilities. (C) Facilities subject to SARA Title III (also known as the Emergency Planning and Community Right-to-Know Act (EPCRA).		
4.D.1.(b) - Each Permittee shall include the following minimum fields of information for each critical sources industrial and commercial facility: (A) Name of facility and name of owner/ operator. (B) Address of facility. (C) Coverage under the IASGP or other individual or general NPDES permits or any applicable waiver issued by the Regional or State Board pertaining to runoff discharges. (D) A narrative description including Standard Industrial Classification (SIC) System/ North American Industry Classification System (NAICS) Codes that best describe the industrial activities performed and principal products used at each facility and status of exposure to storm water.		X[25]
4.D.1.(c) - The Regional Water Board recommends that Permittees include additional fields of information, such as material usage and/ or industrial		X[26]

[25] This specific information is not mandated by the federal MS4 Permit requirements. *See* 40 CFR 122.26(d)(2)(ii).
[26] This specific information is not mandated by the federal MS4 Permit requirements. *See* 40 CFR 122.26(d)(2)(ii).

output, and discrepancies between SIC System/ NAICS Code designations (as reported by facility operators) and identify the actual type of industrial activity that has the potential to pollute storm water. In addition, the Regional Water Board recommends the use of an automated database system, such as a Geographical Information System (GIS) or Internet-based system.		
4.D.1.(d) - Each Permittee shall update its inventory of critical sources at least annually. The update may be accomplished through collection of new information obtained through field activities or through other readily available inter and intra-agency informational databases (e.g. business licenses, pretreatment permits, sanitary sewer hook-up permits, and similar information).		X
4.D.2.(a) – Inspection of Critical Sources Each Permittee shall inspect all facilities identified in Part 4 D.2. twice during the 5-year term of the Order, provided that the first inspection occurs no later than (2 years from the adoption of this Order). A minimum interval of six months between the first and the second mandatory compliance inspection is required. In addition, each Permittee shall implement the activities outlined in the following subsections. At each facility, inspectors shall verify that the operator is implementing the mandatory source control BMPs. The Permittees shall require implementation of additional treatment control BMPs where storm water flows from the MS4 discharge to an ESA or a CWA § 303(d) listed waterbody (see section 3(b) below). Likewise, for those BMPs that are not adequate to achieve MALs and/ or water quality objectives, Permittees may require additional site-specific controls, such as treatment control BMPs.		X
4.D.2.(a)(1) - Each Permittee, in cooperation with its appropriate department (such as health or public works), shall inspect all restaurants within its jurisdiction to confirm that storm water BMPs are being effectively		X

implemented in compliance with State law, County and municipal ordinances. Certain BMPs shall be implemented, unless the pollutant generating activity does not occur.		
4.D.2.(a)(2) - Each Permittee shall confirm that BMPs are being effectively implemented at each facility within its jurisdiction, in compliance with County and municipal ordinances. The inspections shall verify that certain BMPs are being implemented, unless the pollutant generating activity does not occur.	X[27]	
4.D.2.(a)(4) - Each Permittee shall confirm that BMPs are being effectively implemented at each facility within its jurisdiction, in compliance with County and municipal ordinances. The inspections shall verify that certain BMPs are being implemented, unless the pollutant generating activity does not occur. For nursery operations (Agricultural Facilities) in the NAICS Code 11142x - Nursery and Floriculture Production, which are subject to the Conditional Waiver, each Permittee shall: (i) Verify enrollment under the Conditional Waiver by recording a valid identification number. (ii) Notify all non-filers of their lawful obligation to apply for coverage under the Regional Water Board's Conditional Waiver. (B) Permittees shall submit a list of facility names in the NAICS Code 11142x that have been notified to apply for the Conditional Waiver (non-filers). The list of non-filers shall be electronically sent to the Regional Water Board's Regional Programs.		X[28]
4.D.2.(b) – Industrial Facilities		

[27] EPA Guidance Manual for Preparation of the Part 2 of the NPDES Application for Discharges from Municipal Separate Storm Water Systems 6-11.
[28] These requirements go beyond the federal inspection requirements in the MS4 Regulations noted above.

4.D.2.(b)(1) - Each Permittee shall conduct compliance inspections at Phase I, II facilities as specified below. (A) Each Permittee shall perform an initial inspection at all industrial facilities identified by the U.S. EPA in 40 CFR 122.26(c) no later than (2 years after the adoption of the Order). After the initial inspection, all facilities determined as having exposure of industrial activities to storm water are subject to a second mandatory compliance inspection. A minimum interval of 6 months between the first and the second compliance inspection is required. (B) Following the first mandatory compliance inspection, a Permittee shall perform a second mandatory compliance inspection yearly at a minimum of 20% of the facilities determined not to have exposure of industrial activities to storm water. The purpose of this inspection is to verify the continuity of the no exposure status. Facilities determined as having exposure will be notified that they must obtain coverage under the IASGP. A facility need not be inspected more than twice during the term of the Order unless subject to an enforcement action. A minimum interval of 6 months in between the first and the second compliance inspection is required. (C) Applicable to all facilities: A Permittee need not inspect facilities that have been inspected by the Regional Water Board within the previous 24 month interval. However, if the Regional Water Board performed only one inspection, the Permittee shall conduct the second required mandatory compliance inspection.		X
4.D.2.(b)(2) - Each Permittee shall confirm that each operator: (A) Has a current Waste Discharge Identification (WDID) number for facilities discharging storm water associated with industrial activity, and that a Storm Water Pollution Prevention Plan (SWPPP) is available on-site; and, (B) Is effectively implementing BMPs in compliance with County and		X

municipal ordinances. Facilities must implement the source control BMPs identified in Part 4. D. 3. and Appendix D, *California Stormwater Industrial and Commercial BMP Handbook (2003)*. The Permittees shall require implementation of additional treatment control BMPs where the storm water from the MS4 discharges to a CWA § 303(d) listed waterbody; or (C) Has applied and has a current No Exposure Certification (and WDID number) for facilities subject to this requirement.		
4.D.2.(b)(3)(a) – Ensuring Compliance at "Critical" Sites In the event that a Permittee determines that a BMP is infeasible at any site, including those specified in the California Stormwater Industrial and Commercial BMP Handbook (2003), the Permittee shall require implementation of similar BMPs that will achieve the equivalent reduction of pollutants in the storm water discharges. Likewise, for those BMPs that are not adequate to achieve MALs and/ or water quality objectives, Permittees may require additional site-specific controls, such as treatment control BMPs.		X
4.D.2.(b)(3)(b) – Ensuring Compliance at "Critical" Sites (b) For critical sources that discharge to ESAs or that are tributary to CWA § 303(d) listed impaired waterbodies, the Permittees shall require operators to implement additional controls to reduce pollutants in storm water runoff that are causing or contributing to exceedences of MALs and/ or water quality objectives.	X[29]	
4.D.2.(b)(3)(c) – Ensuring Compliance at "Critical" Sites Each Permittee shall implement a progressive enforcement policy to ensure that facilities are brought into compliance with all storm water requirements		X[30]

[29] 40 CFR 122.44(d).
[30] These requirements go beyond the federal MS4 regulations; *See* 40 CFR 122.26(d)(2)(iv)(B)(3).

within a reasonable time period as specified below. (1) In the event that a Permittee determines, based on an inspection conducted, that an operator has failed to adequately implement all necessary BMPs, that Permittee shall take progressive enforcement actions which, at a minimum, shall include a follow-up inspection within 4 weeks from the date of the initial inspection. (2) In the event that a Permittee determines that an operator has failed to adequately implement BMPs after a follow-up inspection, that Permittee shall take further enforcement action as established through authority in its municipal code and ordinances or through the judicial system. (3) Each Permittee shall maintain records and make them available on request to the Regional Water Board, including inspection reports, warning letters, notices of violations, and other enforcement records, demonstrating a good faith effort to bring facilities into compliance.		
4.D.2.(b)(3)(d)(1) – Ensuring Compliance at "Critical" Sites A Permittee may refer a violation(s) to the Regional Water Board provided that that Permittee has made a good faith effort of progressive enforcement. At a minimum, a Permittee's good faith effort must be documented with two follow-up inspections, and two warning letters or notices of violation.		X
4.D.2.(b)(3)(d)(2) - For those facilities in violation of the IASGP, Permittees may escalate referral of such violations to the Regional Water Board after one inspection and one written notice (copied to the Regional Water Board) to the operator regarding the violation.		X
4.D.2.(b)(3)(d)(3) - Each Permittee shall initiate, within one business day, investigation of complaints (other than non-storm water discharges) regarding facilities within its jurisdiction. The initial investigation shall include, at a minimum, a limited inspection of the facility to confirm the complaint to determine if the facility is effectively complying with the		X

municipal storm water urban runoff ordinances, and to oversee corrective action.		
4.D.(b)(3)(d)(4) - As directed by the Regional Water Board Executive Officer, Permittees shall support Regional Water Board enforcement actions by: assisting in identification of current owners, operators, and lessees of facilities; providing staff, when available, for joint inspections with Regional Water Board inspectors; appearing as witnesses in Regional Water Board enforcement hearings; and providing copies of inspection reports and other progressive enforcement documentation.		X
4.D.(b)(3)(d)(5) - The Permittees consent to participate with the Regional Water Board, and other public agencies on an enforcement task force such as the Storm Water Task Force, to communicate concerns regarding special cases of storm water violations by industrial and commercial facilities and to develop a coordinated approach to enforcement action.		X
Part 4.E: Planning and Development Program		
4.E.1.(a) - The Permittees shall implement a development-planning program that will require all New Development and Redevelopment projects to minimize impacts from storm water runoff on the biological integrity of Natural Drainage Systems and water bodies in accordance with requirements under CEQA, Cal. Water Code §13369, CWA § 319, CWA § 402(p), CWA § 404, ESA § 7, and local government ordinances.		X
4.E.1.(b) - The Permittees shall implement a development-planning program that will require all New Development and Redevelopment projects to minimize pollutants emanating from impervious surfaces by reducing the percentage of Effective Impervious Area to less than 5 percent of total project area.		X
4.E.1.(c) - The Permittees shall implement a development-planning program that will require all New Development and Redevelopment projects to		X

minimize the percentage of impervious surfaces on development lands to support the percolation and infiltration of storm water into the ground.		
4.E.1.(d) - The Permittees shall implement a development-planning program that will require all New Development and Redevelopment projects to minimize pollution emanating from impervious surfaces on developed land such as roof-tops, parking lots, and roadways through the use of appropriate Source Controls (good housekeeping practices), Low Impact Development Strategies, and Treatment Control BMPs.		X
4.E.1.(e) - The Permittees shall implement a development-planning program that will require all New Development and Redevelopment projects to Properly design and maintain Treatment Control BMPs (in order to avoid the breeding of vectors).		X
4.E.1.(f) - The Permittees shall implement a development-planning program that will require all New Development and Redevelopment projects to select an integrated approach to mitigate storm water pollution by utilizing a suite of controls in the following order of preference to remove storm water pollutants, reduce storm water runoff volume, and beneficially reuse storm water: (1) Low Impact Development Strategies; (2) Integrated Water Resources Management Strategies; (3) Multi-benefit Natural Feature BMPs; and 4) Prefabricated/ Proprietary Treatment Control BMPs.		X
4.E.1.I.1. - All new development and redevelopment projects shall integrate Low Impact Development (LID) principles into project design. LID is a storm water management and land development strategy that emphasizes conservation and the use of on-site natural features integrated with engineered, small-scale hydrologic controls to more closely reflect predevelopment hydrologic functions. LID is primarily a source control strategy, and minimizes the need for large sub-regional and regional treatment control BMPs.		X

4.E.1.I.2. - The Permittees shall develop a LID Technical Guidance Document no later than (18 months from the Order's adoption date) for use by Land Planners and Developers.		X
4.E.1.I.3. - The Permittees will facilitate implementation of LID by providing key industry, regulatory, and stakeholders with LID objectives and specifications developed in the LID Technical Guidance Document through a training program with certain specified components.		X
4.E.1.II.1.(a) - Each Permittees shall require all new development and redevelopment projects to implement hydrologic control measures, to prevent accelerated downstream erosion and to protect stream habitat in natural drainage systems. The purpose of the hydrologic controls is to minimize changes in post-development hydrologic storm water runoff discharge rates, velocities, and duration. This shall be achieved by maintaining the project's pre-development storm water runoff flow rates and durations.		X
4.E.1.II.1.(c) - Hydrologic Control in natural drainage systems shall be achieved by maintaining the Erosion Potential (Ep) in streams at a value of 1, unless an alternative value can be shown to be protective of the natural drainage systems from erosion, incision, and sedimentation that can occur as a result of flow increases from impervious surfaces and damage stream habitat.		X
4.E.1.II.1.(e) - Until the completion of the SMC's HCS, Permittees shall continue to implement the following Interim hydromodification Criteria to control the adverse impacts of changes in hydrology that result from new development and redevelopment projects. The Interim Hydromodification Impact Criteria are: (1) **Projects disturbing land area of less than fifty acres** Hydrologic control for projects in this size category shall involve		X

matching the Hydrograph for the 2-year post development peak flow, volume, and duration to the pre-development peak flow, volume, and duration for the 2-year 24 hour storm event (not exceeding the pre-development flows). (2) **Projects disturbing land areas of fifty acres or greater** : Hydrologic control for projects in this size category shall involve the completion of a Hydromodification Analysis Study (HAS) by the project proponent to demonstrate that post development conditions are not expected to alter the duration of sediment transporting flows in receiving streams and tributaries. The HAS must demonstrate that the selected hydrologic controls will maintain an Erosion Potential value of 1 unless an alternative value can be shown to be protective of the natural drainage systems from erosion, incision, and sedimentation that can occur as a result of flow increases from impervious surfaces and damage stream habitat in natural drainage system tributaries.		
4.E.1.II.1.(f) - The Permittees shall participate in the second phase of the SMC's HCS to develop a regional stream classification system, a numerical model to predict the hydrological changes resulting from new development and to identify effective mitigation strategies. Should the SMC not proceed with the HCS, Permittees shall complete a similar study limited to the area of Ventura County no later than (18 months from the Order's adoption).		X
4.E.1.II.1.(g)(1), (2) - On completion of the HCS (SMC HCS or Permittee HCS), the Permittees shall develop and implement Watershed Hydromodification Control Plans (HCPs) with a number of required elements, no later than 6 months after the completion of the HCS. The HCP shall identify tributary classifications, flow rate and duration control methods, sub-watershed mitigation strategies, and any in-stream controls, which will maintain the stream and tributary Erosion Potential at 1 unless an		X

alternative value can be shown to be protective of the natural drainage systems from erosion, incision, and sedimentation that can occur as a result of flow increases from impervious surfaces and damage stream habitat in natural drainage system tributaries.		
4.E.1.III.1.(a) - Each Permittee shall require that during the construction of a single-family hillside home, measures be taken to: (1) Conserve natural areas. (2) Protect slopes and channels. (3) Provide storm drain system stenciling and signage. (4) Divert roof runoff to vegetated areas before discharge unless the diversion would result in slope instability. (5) Direct surface flow to vegetated areas before discharge unless the diversion would result in slope instability.		X
4.E.1.III.1.(b) - Each Permittee shall require that all development projects equal to 1 acre or greater of disturbed area be subject to conditioning and approval for the design and implementation of post-construction treatment controls and BMPs to mitigate storm water pollution.		X
4.E.1.III.1.(c) - Each Permittee shall require, in addition, that additional development projects be subject to conditioning and approval for the design and implementation of post-construction treatment controls and BMPs to mitigate storm water pollution, including: (1) Industrial park 5,000 square feet or more of surface area; (2) Commercial strip mall 5,000 square feet or more of surface area; (3) Retail gasoline outlet 5,000 square feet or more of surface area; (4) Restaurant (SIC 5812) 5,000 square feet or more of surface area; (5) Parking lot 5,000 square feet or more of surface area or with 25 or more parking spaces; (6) Streets, roads, highways, and freeway construction of 5,000 square feet or more of surface area; (7) Automotive service facilities (SIC 5013, 5014, 5541, 7532-7534 and 7536-7539) [5,000 square feet or		X

more of surface area]; and (8) Redevelopment projects in subject categories that meet Redevelopment thresholds (identified below in section III.4).		
4.E.1.III.1.(d) - Each Permittee shall require, in addition, that post-construction BMPs be subject to conditioning and approval for the design and implementation of post-construction treatment controls and BMPs to mitigate storm water pollution at development projects located in or directly adjacent to, or discharging directly to an environmentally Sensitive Area (ESA), where the development will: (1) discharge storm water runoff that is likely to impact a sensitive biological species or habitat, or(2) create 2,500 square feet or more of impervious surface area.		X
4.E.1.III.2.(a) - Tiered Numeric Water Quality Design Criteria (Projects disturbing land areas less than 50 acres) Each Permittee shall require that post-construction treatment control BMPs incorporate, at a minimum, a volumetric and/ or hydrodynamic (flow based) treatment control design standard, consistent with the objectives stated in Part 4. E.1. and as identified below to mitigate (infiltrate, filter or treat) storm water: (1) Volumetric Treatment Control BMP (A) The 85th percentile 24-hour runoff event determined as the maximized capture storm water volume for the area, from the formula recommended in *Urban Runoff Quality Management, WEF Manual of Practice No. 23/ASCE Manual of Practice No. 87, (1998)*; or (B) The volume of annual runoff based on unit basin storage water quality volume, to achieve 80 percent or more volume treatment (Ventura County Technical Manual); or (C) The volume of runoff produced from a 0.75 inch storm event, prior to its discharge to a storm water conveyance system; and/ or		X

(2) Hydrodynamic (Flow Based) Treatment Control BMP (A) The flow of runoff produced from a rain event equal to at least 0.2 inches per hour intensity; or (B) The flow of runoff produced from a rain event equal to at least 2 times the 85th percentile hourly rainfall intensity for Ventura County; or (C) Ten percent of the 50-year storm design flow rate.		
4.E.1.III.2.(b) - Tiered Numeric Water Quality Design Criteria (Projects disturbing land areas 50 acres or greater) Each Permittee shall require that post-construction treatment control BMPs be: (1) Designed using an appropriate public domain hydrodynamic model (such as Storm Water Management Model (SWMM) 5 or Hydrologic Engineering Center – Hydrologic Simulation Program – Fortran (HEC-HSPF); and incorporate the following: (A) Rainfall intensity based on hourly rainfall records; (B) An adjustment factor for within hour rainfall variability; and (C) Hydraulics of BMP Performance. (2) Satisfy the objectives identified for storm water quality management identified in Part 4. E.1.		X
4.E.1.III.3.(a) – Site Specific Mitigation Each Permittee shall require the implementation of a site-specific plan to mitigate post-development storm water for new development and redevelopment projects not identified in Parts 4. E. III.1(b), III.1(c), and III.1(d), but which may potentially have adverse impacts on post-development storm water quality, where 1 or more of the following project characteristics exist: (1) Vehicle or equipment fueling areas;		X

(2) Vehicle or equipment maintenance areas, including washing and repair; (3) Commercial or industrial waste handling or storage; (4) Outdoor handling or storage of hazardous materials; (5) Outdoor manufacturing areas; (6) Outdoor food handling or processing; (7) Outdoor animal care, confinement, or slaughter; or (8) Outdoor horticulture activities.		
4.E.1.III.4.(a) – Redevelopment Projects Each Permittee shall apply the post-construction BMP requirements, or site specific requirements including post-construction storm water mitigation to all projects that undergo significant Redevelopment in their respective categories.		X
4.E.1.III.5.(a) – Maintenance Agreement and Transfer Each Permittee shall require that all development projects subject to post-construction BMP requirements and site specific plan requirements provide verification of maintenance provisions for Structural and Treatment Control BMPs, including but not limited to legal agreements, covenants, CEQA mitigation requirements, and/ or conditional use permits.	X[31]	
4.E.1.III.6.(a) - Each Permittee shall implement a program to inspect and enforce on new development and redevelopment projects for post-construction control BMPs.		X
4.E.1.III.6.(a)(1) - Prior to approving and signing off for occupancy and issuing the Certificate of Occupancy for all new development and redevelopment projects subject to post-construction control BMPs, each Permittee shall inspect the constructed site design, Structural control and		X

[31] 40 CFR 122.26(d)(2)(iv)(A)(i).

Treatment control BMPs to verify that they have been constructed in compliance with all specifications, plans, permits, ordinances, and this Order.		
4.E.1.III.7.(a) - A Permittee or a coalition of Permittees may apply to the Regional Water Board for approval of a regional or sub-regional storm water mitigation program to substitute in part or wholly for on-site post-construction requirements. Upon review and a determination by the Regional Water Board Executive Officer that the proposal is technically valid and appropriate, the Regional Water Board may consider for approval such a program if its implementation will: (1) Result in equivalent or improved storm water quality. (2) Protect stream habitat. (3) Promote cooperative problem solving by diverse interests. (4) Be fiscally sustainable and has secure funding. (5) Be completed in four years or less including the construction and startup of treatment facilities.		X
4.E.1.III.7.(b) - A Permittee may apply to the Regional Water Board for approval of a Redevelopment Project Area Master Plan (RPAMP) for redevelopment projects within Redevelopment Project Areas, in consideration of balancing the environment with the needs for adequate housing, population growth, public transportation and management, land recycling, and urban revitalization. The RPAMP may substitute in part or wholly for on-site post-construction requirements. Upon review and a determination by the Regional Water Board Executive Officer that the proposal is technically valid and appropriate, the Regional Water Board may consider for approval such a program if its implementation will result in equivalent or improved storm water quality.		X
4.E.1.III.8.(a) - The Permittees may propose a management framework, for approval by the Regional Water Board Executive Officer, to support regional		X

or subregional solutions to storm water pollution, where any of the following situations occur: (1) A waiver for impracticability is granted; (2) Funds become available; (3) Off-site mitigation is required because of loss of environmental habitat; or (4) An approved watershed management plan, or an integrated water resources management plan, or a regional storm water mitigation plan, or a wetlands recovery plan exists that incorporates an equivalent or improved strategy for storm water pollution mitigation.		
4.E.1.III.9.(a)(1) - Each Permittee shall develop and implement no later than (6 months from this Order's adoption) the following a GIS or other electronic system for tracking projects that have been conditioned for post-construction treatment control BMPs.		X
4.E.1.III.9.(a)(2) - A post-construction treatment control BMP inspection program to verify proper maintenance and operation of post-construction treatment control BMPs previously approved.	X[32]	
4.E.1.III.10.(a) - The Ventura County Technical Guidance Manual for Storm Water Quality Control Measures shall be updated to include a number of additional requirements, including Hydromod control criteria, expected BMP pollutant removal performance, appropriate BMPs for Stormwater POCs, LID specifications and BMP cost information, etc.		X
4.E.1.III.11.(a) - Each Permittee shall facilitate a process for effective approval of post-construction control measures.	X[33]	
4.E.1.III.12.(a) - Each Permittee shall incorporate into its CEQA process, with immediate effect, procedures for considering potential storm water quality impacts and providing for appropriate mitigation when preparing and reviewing CEQA documents.	X[34]	

[32] 40 CFR 122.26(d)(2)(iv)(A)(1).
[33] 40 CFR 122.26(d)(2)(iv)(A)(1).

4.E.1.III.13.(a) - Each Permittee shall amend, revise or update its General Plan to include watershed and storm water quality and quantity management considerations and policies when certain General Plan elements are updated or amended (i.e., land use, etc.).	X[35]	
Part 4.F: Development Construction Program		
4.F.1.(a) – Grading Prohibitions Each Permittee shall implement a program to control storm water discharges from construction activity at all construction sites within its jurisdiction. During the wet season, the program shall ensure that the following requirements are effectively implemented at all of the construction site categories listed below: (1) No grading shall occur between October 1 – April 15 (wet season) for construction projects in the following areas of high erosivity or receiving water impairment or sensitive habitat: (A) On hillsides with slopes 20% or steeper prior to land disturbance; (B) Directly discharging to a waterbody listed on the CWA § 303 d) list for siltation or sediment; or (C) Within or adjacent to an environmentally sensitive area (ESAs).		X
4.F.1.(b) - If grading operations in these areas are not completed before the onset of the wet season beginning October 1st, grading shall be halted and effective erosion control measures shall be put in place to minimize erosion. Grading shall not resume until after April 15th. Depending on the project area, the developer shall implement the Erosion and Sediment control BMPs listed in Tables 5, 6, and 7.		X
4.F.1.(b)(1) - A Grading Prohibition Variance may be granted by the		X

[34] 40 CFR 122.26(d)(2)(iv)(A)(2).
[35] 40 CFR 122.26(d)(2)(iv)(A)(2).

Attachment A

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Regional Water Board Executive Officer, where the Permittee can demonstrate that BMP measures proposed by the project proponent and approved by the Permittee can be reasonably expected to: (A) not cause or contribute to the degradation of water quality; (B) ensure that Total Suspended Solids discharged is 100mg/L or less; (C) ensure that Turbidity of the discharge is 50 NTU or less; (D) not impair beneficial uses; and (E) includes a monitoring program to ensure effectiveness.		
4.F.2. – Sites less than one acre Each Permittee shall require the implementation of a minimum set of BMPs at all construction sites to prevent erosion and sediment loss, and the discharge of construction wastes. Where the Erosivity Factor (R) for the construction project is 50 or greater, erosion controls (erosion avoidance) will be the preferred BMPs.		X
4.F.3. - Sites 1 acre or greater but Less than 5 acres Each Permittee shall require the implementation of the following BMPs in addition to the ones identified for sites less than one acre to prevent erosion and sediment loss, and the discharge of construction wastes.		X
4.F.4. - Construction Sites 5 acres and Greater Each Permittee shall require the implementation of the following BMPs, in addition to the ones identified for smaller sites, to prevent erosion and sediment loss, and the discharge of construction wastes.		X
4.F.5.(a) - Each Permittee shall require for all construction sites 1 acre or greater, compliance with all conditions identified in the Order and additional requirements including compliance with the SWPPP.		X
4.F.6.(a) - Each Permittee shall require that for any project that includes roadbed or street paving, repaving, patching, digouts, or resurfacing roadbed surfaces, that certain BMPs be implemented for each project.		X
4.F.7.(a) - Each Permittee shall use an electronic system to track grading		X

permits, encroachment permits, demolition permits, building permits, or construction permits (and any other municipal authorization to move soil and/ or construct or destruct that involves land disturbance) issued by each Permittee. To satisfy this requirement, the use of a database or GIS system is encouraged, but not required.		
4.F.8.(a) - Each Permittee shall inspect all construction sites for the implementation of storm water quality controls a minimum of once during the wet season.		X[36]
4.F.8.(a)(1) – Each Permittee shall ensure that the Local SWPPP shall be reviewed for compliance with local codes, ordinances, and permits.		X
4.F.8.(a)(2) – Each Permittee shall ensure that for inspected sites that have not adequately implemented their Local SWPPP, a follow-up inspection to ensure compliance shall take place within 2 weeks.		X
4.F.8.(a)(3) – Each Permittee shall ensure that if compliance with municipal codes, ordinances, or permits has not been attained, the Permittee shall take additional enforcement actions to achieve compliance as specified in municipal codes.		X[37]
4.F.8.(a)(4) – Each Permittee shall ensure that if compliance has not been achieved, and the site is also covered under a Construction Activities Storm Water General Permit (CASGP) or Small Linear Underground/ Overhead Construction Projects General Permit (small LUPs), each Permittee shall notify the Regional Water Board for further joint enforcement actions in conformance with the procedures listed in section D.3.(d)- Interagency Coordination of this Order.		X

[36] The construction site inspection requirements go beyond those required by the federal MS4 regulations. See EPA Guidance for the Preparation of Part 2 of the NPDES Permit Application for Municipal Separate Storm Sewer Systems 6-15.
[37] The construction site inspection requirements go beyond those required by the federal MS4 regulations. See 40 CFR 122.26(d)(2)(iv)B)(3).

4.F.8.(b) – Prior to approving and/ or signing off for occupancy and issuing the Certificate of Occupancy for all construction projects subject to post-construction controls, each Permittee shall inspect the constructed site design, source control and treatment control BMPs to verify that they have been constructed in compliance with all specifications, plans, permits, ordinances, and this Order.		X
4.F.9.(a) – Each Permittee shall ensure that no grading permit, encroachment permit, demolition permit, building permit, electrical permit, or construction permit (or any other municipal authorization to move soil and/ or construct or destruct that involves land disturbance) is issued for any project requiring coverage under the CASGP or Small LUP General Permit unless: (1) Proof of coverage under a State NPDES permit is demonstrated (a copy of a letter from the State Water Board showing a valid Waste Discharger Identification Number (WDID) for that site); (2) Demonstration or Certification that a SWPPP has been prepared by the project developer. A Local SWPPP may substitute for the State SWPPP if the Local SWPPP is at least as inclusive in controls and BMPs as the State SWPPP; and (3) Proof of an updated NOI(s) and a copy of the modified SWPPP(s) at any time a transfer of ownership takes place for the entire development or portions of the common plan of development where construction activities		X

are still on-going.		
4.F.10.(a)(1) – A Permittee may refer a violator to the Regional Water Board provided that the Permittee has made a good faith effort at progressive enforcement consistent with the preceding section F.7. At a minimum, the Permittee's good faith effort shall be documented with: (1) a minimum of 2 follow-up inspection reports (inspections completed within 3 months); and (2) a minimum of 2 warning letters or NOVs.		X[38]
4.F.10.(a)(b) – Referral of Non-filer under the CASGP or the Small LUP General Permit: Each Permittee shall refer non-filers (i.e., those projects which cannot demonstrate that they have a WDID number) under the CASGP or Small LUP General Permit, to the Regional Water Board, no later than 15 days after making a determination of failure to file.		X
4.F.10.(a)(c) - Each Permittee shall initiate, within 1 business day of receiving notification from the Regional Board of a complaint, an initial investigation of complaint(s) (other than non-storm water discharges) on the construction site(s) within its jurisdiction.		X[39]
4.F.10.(a)(d) - Each Permittee shall support Regional Water Board enforcement actions by: (A) assisting in identification of current owners, operators, and lessees of properties and sites; (B) providing staff, when available, for joint inspections with Regional Water Board inspectors; (C) appearing to testify as witnesses in Regional Water Board enforcement hearings; and (D) providing copies of inspection reports and other progressive enforcement documentation.		X
Part 4.G: Public Agency Activities Program		

[38] The construction site enforcement requirements go beyond those required by the federal MS4 regulations. See 40 CFR 122.42(c)(6).
[39] The construction site enforcement requirements go beyond those required by the federal MS4 regulations. See EPA Guidance Manual for the Preparation of Part 2 of the NPDES Permit Applications for Discharges from Municipal Separate Storm Sewers 6-15.

4.G. - Each Permittee shall implement a Public Agency Activities Program to minimize storm water pollution impacts from public agency activities, which includes a number of requirements.		X
4.G.1.(a) - Each Permittee shall implement a response plan for overflows of the sanitary sewer system within their respective jurisdiction.		X
4.G.1.(b) - Each Permittee which owns and/ or operates a sanitary sewer system, shall in addition to the preceding section 1(a), also implement the following requirements: (1) Identify, repair, and remediate sanitary sewer blockages, exfiltration, overflow, and wet weather overflows from sanitary sewers to the MS4; and (2) Implement procedures and maintenance on schedules to prevent sewage spills or leaks from sewage facilities from entering the MS4.	X[40]	
4.G.1.(c) - Each Permittee with septic systems in their jurisdiction shall implement a response plan for overflows of septic system leachate to surface waters within their respective jurisdiction.		X
4.G.1.(d) - In addition, Regional Water Board expects that the municipal departments that have responsibilities to implement the MS4 NPDES permit, other individual NPDES permits that may contain spill prevention, sewer maintenance, pretreatment programs and the SSO WDR will coordinate their compliance activities for consistency and efficiency.		X
4.G.2.(c) - Each Permittee shall obtain coverage under the CASGP for construction activities and projects that are: (1) Covered under 1 (or more) Capital Improvement Projects (including but not limited to street repaving, new streets, channel clearing) or contract, and that individually or cumulatively disturb 1 acre or more of land; or (2) Less than 1 acre, but are part of a larger common plan of development		X

[40] 40 CFR 122.26(d)(2)(iv)(B)(7).

that in total disturbs 1 or more acres of land; and (3) Linear construction project(s) that disturb 5 or more acres of land.		
4.G.2.(d) - Each Permittee shall obtain coverage under the Small LUP General Permit when disturbing at least 1 acre, but less than 5 acres of land during linear construction (land area includes trenching and staging areas).		X
4.G.3.(a) - Each Permittee shall implement certain BMPs at all Permittee owned, leased facilities and job sites including but not limited to vehicle/ equipment maintenance facilities, material storage facilities, and corporation yards, and at any area that includes the activities as described in the order.		X
4.G.4.(a) - Each Permittee shall eliminate discharges of wash waters from vehicle and equipment washing no later than (365 days after permit adoption) by implementing any of certain measures at existing facilities with vehicle or equipment wash areas.		X
4.G.5.(a) - Each Permittee shall implement a jurisdiction-wide IPM program (an ecosystem based strategy that focuses on long-term prevention of pests or their damage through a combination of techniques such as biological control, habitat manipulation, modification of cultural practices, and use of resistant varieties).		X
4.G.6.(a)(1) - Each Permittee shall designate catch basin inlets within its jurisdiction as one of the following: Priority A: Catch basins that are designated as consistently generating the highest volumes of trash and/ or debris. Priority B: Catch basins that are designated as consistently generating moderate volumes of trash and/ or debris. Priority C: Catch basins that are designated as generating low volumes of trash and/ or debris.		X
4.G.6.(a)(2) - Each Permittee shall clean catch basins according to the following schedule:		X

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Priority A: A minimum of 3 times during the wet season and once during the dry season every year. Priority B: A minimum of once during the wet season and once during the dry season every year. Priority C: A minimum of once per year.		
4.G.6.(a)(3) - In addition to the preceding schedule, Permittees shall ensure that any catch basin that is at least 25% full of trash and/ or debris shall be cleaned out.		X
4.G.6.(b) - Each Permittee shall require for any event in the public right of way or wherever it is foreseeable that substantial quantities of trash and litter may be generated, that certain measures be implemented.		X
4.G.6.(c) (1) - Each Permittee shall install trash receptacles at all transit stops in commercial areas and near schools within its jurisdiction no later than (6 months from the Order's adoption).		X
4.G.6.(c) (2) - Each Permittee shall ensure that all trash receptacles are cleaned out and maintained as necessary to prevent trash overflow.		X
4.G.6.(d)(1) - Each Permittee shall inspect the legibility of the catch basin stencil or label nearest each catch basin and inlet before the rainy season begins.		X
4.G.6.(d)(2) - Each Permittee shall record and re-stencil or re-label within 15 days of inspection, catch basins with illegible stencils.		X
4.G.6.(e)(1) - Each Permittee shall install trash excluders, or similar devices on catch basins to prevent the discharge of trash to the storm drain system on all catch basin inlets no later than (180 from permit adoption).		X
4.G.6.(f) - Each Permittee shall implement a program for Storm Drain Maintenance no later than (180 days after permit adoption) that includes certain specific requirements.		X
4.G.6.(g)(1) - Permittee Owned Treatment Control BMPs		X

Each Permittee shall implement an inspection and maintenance program for all Permittee owned treatment control BMPs, including post-construction treatment control BMPs.		
4.G.6.(g)(2) - Permittee Owned Treatment Control BMPs Each Permittee shall ensure proper operation of all treatment control BMPs and maintain them as necessary for proper operation, including post-construction treatment control BMPs.		X
4.G.6.(g)(3) - Permittee Owned Treatment Control BMPs Any residual water within a treatment control BMP when being maintained shall be: (A) Hauled away and legally disposed of; (B) Discharged to the sanitary sewer system (with permits or authorization); or (C) Treated to remove bacteria, sediments, nutrients, and meet the limitations set in Table 10 prior to discharge to the MS4.		X
4.G.7.(a)(1) - Each Permittee shall perform street sweeping of curbed streets in commercial areas to control trash and debris at least 2 times per month.		X[41]
4.G.7.(b)(1) - Each Permittee shall implement certain BMPs for road reconstruction.		X
4.G.8.(a) - Each Permittee shall obtain coverage under the CASGP for all long-term maintenance programs including but not limited to any project under the Capital Improvement Program (CIP) including but not limited to: pavement replacement; sidewalk replacement; channel maintenance; roadside maintenance (such as vegetation removal); or grading, clearing or excavation activities that disturb 1 or more acres of land either for an individual project or as part of a long-term city/county plan that may be less.		X

[41] Street sweeping is not specifically required by the federal permitting scheme. 40 CFR 122.26(d)(2)(iv)(A)(3).

4.G.9.(a) - Each Permittee shall obtain separate coverage under the IASGP for any municipal activity subject to U.S. EPA regulations at CFR 122.26 for the discharge of storm water associated with industrial activity.		X
4.G.12.(a) - Each Permittee shall, no later than (6 months from the permit adoption and annually thereafter before June 30), train all of their employees and contractors in targeted positions (whose interactions, jobs, and activities affect storm water quality) on the requirements of the overall storm water management program to: (1) Promote a clear understanding of the potential for activities to pollute storm water; and (2) Identify opportunities to require, implement, and maintain appropriate BMPs in their line of work.		X[42]
4.G.12.(b) - Each Permittee shall, no later than (6 months from the permit adoption and annually thereafter before June 30), train all of their employees and contractors who use or have the potential to use pesticides, herbicides or fertilizers (whether or not they normally apply these as part of their work).		X[43]
4.G.12.(c) - Each Permittee shall, no later than (6 months from the permit adoption) and annually thereafter before June 30, train all of their employees and contractors who are responsible for illicit connections and illicit/ illegal discharges.		X[44]
Part 4.H: Illicit Discharges		
4.H. - Each Permittee shall eliminate all Illicit Connections and Illicit Discharges (IC/ ID) to the storm drain system, and shall document, track, and report all such cases in accordance with the elements and performance	X[45]	

[42] Federal permit requirements do not place specific curricular requirements on the education programs. *See* 40 CFR 122.26(d)(2)(iv)(D)(4).
[43] Federal permit requirements do not place specific curricular requirements on the education programs. *See* 40 CFR 122.26(d)(2)(iv)(D)(4).
[44] Federal permit requirements do not place specific curricular requirements on the education programs. *See* 40 CFR 122.26(d)(2)(iv)(D)(4).

measures specified in the following subsections.		
4.H.1.(a) - Each Permittee shall implement an IC/ ID Program. The IC/ ID procedures shall be documented and made available for review.	X[46]	
4.H.1.(b) - All Permittees shall, no later than (2 years after the adoption of this Order), map at a scale and in a format specified by the Principal Permittee all permitted connections to their storm drain system. All Permittees shall map at a scale and in a format specified by the Principal Permittee incidents of illicit connections and discharges on their baseline maps, and shall transmit this information to the Principal Permittee no later than (2 years after the adoption of this Order). Permittees shall use this information to identify priority areas for further investigation and elimination of IC/ ID.		X[47]
4.H.2.(a) - Permittees shall establish and maintain a phone hotline and internet site to receive all reports of IC/ ID complaints.	X[48]	
4.H.2.(b) - Permittees shall document the location of the reported IC/ ID and the actions undertaken in response to all IC/ ID complaints.	X[49]	
4.H.3.(a)(1) - The Permittees shall submit to the Principal Permittee: (A) A GIS layer showing the location and length of underground pipes 18 inches and greater in diameter, and channels within their jurisdiction in accordance with the following schedule: (i) All channeled portions of the storm drain system no later than (365 days after the adoption of this Order). (ii) All portions of the storm drain system consisting of storm drain pipes 36		X

[45] 40 CFR 122.26(d)(2)(vi)(B).
[46] 40 CFR 122.26(d)(2)(vi)(B).
[47] The federal MS4 Permit requirements do not mandate these specifics for mapping purposes. *See* 40 CFR 122.26(d)(2)(iv)(B); 40 CFR 122.42(c).
[48] A hotline is recommended by EPA but not required by the applicable regulations.
[49] 40 CFR 122.26(d)(2)(iv)(B)(5).

inches in diameter or greater, (no later than 3 years after the adoption of this Order). (iii) All portions of the storm drain system consisting of storm drain pipes 18 inches in diameter or greater, (no later than 5 years after the adoption of this Order).; and (B) The status of suspected, confirmed, and terminated illicit connections.		
4.H.3.(a)(2) - Permittees shall conduct field screening of their storm drain systems in accordance with screening procedures described in the Illicit Discharge Detection and Elimination, A Guidance Manual for Program Development and Technical Assessments (2004). Permittees shall conduct field screening for illicit connections in accordance with the following schedule: (A) All portions of the storm drain system consisting of storm drain pipes 36 inches in diameter or greater no later than (5 years after the adoption of this Order). (B) High priority areas identified during the mapping of illicit connections and discharges no later than (5 years after the adoption of this Order). (C) All portions of storm drain systems 50 years or older in age no later than (5 years after the adoption of this Order).		X
4.H.3.(a)(3) - Each Permittee shall maintain a list containing all connections under investigation for possible illicit connection and their status.	X[50]	
4.H.3.(b)(1) - Upon discovery or upon receiving a report of a suspected illicit connection, a Permittee shall complete an investigation within 21 days to determine source, etc.		X
4.H.3.(b)(2) - Upon confirmation of an illicit storm drain connection, a Permittee shall ensure the following: Termination of the connection within		X

[50] Ibid.

180 days of completion of the investigation, using formal enforcement authority to eliminate the illicit connection.		
4.H.3.(b)(3) - Permittees shall keep records of all illicit connection investigations and the formal enforcement taken to eliminate all illicit connections.	X[51]	
4.H.4.(a) - The Permittees shall investigate an illicit/ illegal discharge during or immediately following containment and cleanup activities, and shall take formal enforcement action to eliminate the illegal discharge.		X[52]
4.H.4.(b) - Each Permittee shall respond, within 1 business day of discovery or a report of a suspected illicit/ illegal discharge, with actions to abate, contain, and clean up all illegal discharges, including hazardous substances.		X[53]
4.H.4.(c) - Permittees shall maintain records of all illicit/ illegal discharge discoveries, reports of suspected illicit/ illegal discharges, their response to the illicit/ illegal discharges and suspected illicit/ illegal discharges, and the formal enforcement taken to eliminate all illicit/ illegal discharges.	X[54]	
Part 4.I: Reporting Program		
4.H.1. - The Principal Permittee in consultation with the Permittees and Regional Water Board staff shall convene an ad hoc working group to develop an Electronic Reporting Program, the basis of which shall be the questions in the attached Monitoring Report and Program Report (Reporting Program- Attachment "H") for approval by the Regional Water Board Executive Officer. The Committee shall no later than (6 months of permit adoption): (a) develop an electronic reporting format and (b) Include		X

[51] Ibid.
[52] Federal MS4 Permit requirements do not require "immediate" action to eliminate all detected illicit discharges. *See* 40 CFR 122.26(d)(2)(iv)(B)(3).
[53] Ibid.
[54] 40 CFR 122.26(d)(2)(iv)(B)(5).

requirements as basis for reporting.		
4.H.3. - The Principal Permittee shall submit by December 15th of each year beginning the year of 2007, an Annual Report to the Regional Water Board Executive Officer in the form of one hard copy and three compact disk (CD) copies (or an electronic equivalent).	X[55]	
4.H.4. - The Annual Report shall document the status of the General Storm Water Program, an integrated summary of the results of analyses from: (a) The monitoring program described under Part 1- Monitoring Report; and (b) The requirements described under Part 2-Program Report.		X[56]
Part 5 – Watershed Ecological Restoration Planning		
5.1. - The Permittees shall develop and implement Watershed Ecological Restoration Plans (ERP) and submit Annual Watershed Ecological Restoration Status Reports (ERSR) in accordance with the requirements in Part 5 of this Order.		X
5.2. – The Permittees shall develop ERPs for all Watershed Management Areas' (WMA) stream segments that have obtained a score of "poor" and "very poor" from Bioassessment Monitoring (Attachment "F", section E).		X
5.4. - Permittees within WMA, shall develop ERP for the degraded stream segments of the Ventura River, Santa Clara River and Calleguas Creek.		X
5.5 - The Permittees shall submit Annual ERSR on the WMA ERP.		X
Part 6 – TMDLs		
6.1.(a)(1) - Permittees (Ventura County Watershed Protection District, and the Cities of Santa Paula and Fillmore) in the Santa Clara River and its Tributaries' (Reach 3) shall conduct field screening of their storm drain systems, in accordance with screening procedures documented in *Illicit*		X

[55] 40 CFR 122.42(c) contains the annual reporting requirements for the MS4 Program.
[56] The reporting and monitoring requirements contained in the Proposed Order go beyond the federal MS4 Permit requirements.

Discharge Detection and Elimination for nitrogen compounds.		
6.1.(a)(2) - The WLAs are expressed as numerical limits in-stream for Ammonia and Nitrate within the Santa Clara River and its Tributaries' Watershed (Reach 3), established for its MS4 Permittees are following: (A) MS4 Permittees shall not exceed water quality objectives in the Water Quality Control Plan Los Angeles Region (Basin Plan), the Ocean Plan, and the California Toxics Rule (CTR) for both acute and chronic criteria for Ammonia and Nitrate plus Nitrite.	X[57]	
6.2(a)(1) - MS4 Permittees (Ventura County Watershed Protection District, County of Ventura, and the Cities of Simi Valley and Thousand Oaks) discharging to Malibu Creek and Lagoon shall conduct field screening of their storm drain systems, in accordance with screening procedures documented in *Illicit Discharge Detection and Elimination* for Bacteria.		X
6.3.(a)(1) - The WLAs are expressed as numerical limits in-stream for Toxicity, Chlorpyrifos and Diazinon within Calleguas Creek, its Tributaries and Mugu Lagoon's Watershed, established for its MS4 Permittees (see Table 12 of Proposed Permit).	X[58]	
6.4.(a)(1) - The WLAs expressed as numerical limits in-sediment for Organochlorine (OC) Pesticides, Polychlorinated Biphenyls (PCB) and Siltation within Calleguas Creek, its Tributaries and Mugu Lagoon established for the MS4 Permittees (Ventura County Watershed Protection District, County of Ventura, and the Cities of Camarillo, Moorpark, Simi Valley, and Thousand Oaks) are set forth in Table 13 of Proposed Permit).	X[59]	
Part 8 – Standard Provisions		

[57] 40 CFR 122.44(d)(1).
[58] 40 CFR 122.44(d)(1).
[59] Ibid.

8.E. - Each Permittee shall take all reasonable steps to minimize or prevent any discharge that has a reasonable likelihood of adversely affecting human health or the environment.	X[60]	
8.K.1. - Each Permittee shall take all reasonable steps to minimize or prevent any discharge that has a reasonable likelihood of adversely affecting human health or the environment.	X[61]	
8.K.2 - The Permittees shall also furnish to the Regional Water Board, upon request, copies of records required to be kept by this Order.	X[62]	
8.L. - The Permittees shall report to the Regional Water Board any noncompliance that may endanger health or the environment. Any information shall be provided orally within 24 hours from the time any Permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the Permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.	X[63]	
8.T. – Compliance with annual MS4 Reporting program.	X[64]	
Exhibit H.A. - The Principal Permittee shall monitor mass emissions to accomplish the following objectives:		X

[60] 40 CFR 122.41(d).
[61] 40 CFR 122.41(h)
[62] 40 CFR 122.41(h)
[63] 40 CFR 122.41(l)(6).
[64] 40 CFR 122.42(c) – the specific reporting requirements noted below go beyond the monitoring requirements required by federal MS4 regulations.

Estimate the mass emissions from the MS4. • Assess trends in the mass emissions over time. • Determine if the MS4 is contributing to exceedences of water quality objectives by comparing results to applicable water quality objectives in the Water Quality Control Plan Los Angeles Region (Basin Plan), the Ocean Plan, and the California Toxics Rule (CTR) for both acute and chronic criteria.		
Exhibit H.A.1. - The Santa Clara River mass emission station (ME-SCR) shall be relocated so that mass emissions measurements include urban storm water discharges from the cities of San Buenaventura and Oxnard. Until the ME-SCR station is relocated, the Principal Permittee in coordination with the cities of San Buenaventura (ME-SB) and Oxnard (ME-OX) shall separately monitor mass emissions from the two urbanized areas.		X
Exhibit H.A.2. - The Principal Permittee shall monitor mass emissions from the following 5 mass emission stations: (a) ME-VR for Ventura River. (b) ME-SCR for Santa Clara River. (c) ME-SB for Santa Clara River (until ME-SCR is relocated). (d) ME-OX for the Santa Clara River (until ME-SCR is relocated). (e) ME-CC for Calleguas Creek.		X
Exhibit H.A.8. - The Principal Permittee shall monitor: (a) The first storm event of the wet season that produces at least 0.25 inches of rain, and 2 additional storm events. (b) Also, 2 dry weather flow events shall be monitored. (A) Monitor 1 prior to the onset of wet weather- October 1st (during the months of May - June). (B) Monitor 1 post wet weather- April 15th (during the months of August - September).		X

(c) A total of 5 monitoring events (3 storm and 2 dry weather) shall be sampled per mass emission station.		
Exhibit H.A.9. - All storms events, in addition to those required above, that result in at least 0.25 inches of rainfall shall be sampled and analyzed for total suspended solids (TSS). Results shall be used to assess the variability of storm water constituents and provide an accurate estimate of mass emissions (pollutant correlation with TSS).		X
Exhibit H.A.16. - The Principal Permittee shall perform an annual analysis, to be included in the Annual Storm Water Report, of the correlation between POC (including, but not limited to metals and PAHs) and TSS loading for the sampling events that are analyzed for the complete list of constituents in Attachment "G" of the Order.		X
Exhibit H.B. – Aquatic Toxicity Monitoring The Principal Permittee shall analyze mass emission samples and tributary samples for aquatic toxicity to evaluate the extent and causes of toxicity in receiving waters. Permittees shall utilize documents such as: Ventura County's Technical Guidance Manual for Storm Water Quality Control Measures and U.S. EPA's National Management Measures to Control Nonpoint Source Pollution from Urban Areas to implement measures to eliminate or reduce sources of toxicity in storm water.		X
Exhibit H.C. - The Principal Permittee shall monitor tributary emissions to accomplish the following objectives: • Identify sub-watersheds where storm water discharges are causing or contributing to exceedences of water quality objectives. • Prioritize drainage and sub-drainage areas where control measures need to be implemented. • Determine if the MS4 is contributing to exceedences of water quality objectives by comparing results to applicable water quality objectives in the		X

Basin Plan, and the California Toxics Rule (CTR) for both acute and chronic criteria.		
Exhibit H.D. - This Monitoring section incorporates the TMDL MS4 Waste Load Allocations (WLAs) that have been adopted by the Regional Water Board and have been approved by the Office of Administrative Law and the U.S. EPA.		X
Exhibit H.D.1.(a)(1) - Upon adoption of the Order, the discharge of dry weather flows from the MS4 to Santa Clara River that exceed the WLA is prohibited. Permittees shall implement an illicit connection/ discharge elimination (ICIDE) program to detect and eliminate the discharge of Ammonia and Nitrate plus Nitrite to the MS4, and shall monitor a minimum of 2 dry weather flow events at the Santa Clara River mass emission station (ME-SCR). The MS4 Permittees shall monitor 1 dry weather flow event prior to the onset of wet weather- October 1st (during the months of May - June); and monitor 1 dry weather flow event post wet weather- April 15th (during the months of August - September).		X
Exhibit H.D.2.(a)(1) - Upon adoption of the Order, the discharge of summer dry weather flows from the MS4 to Malibu Creek and Lagoon is prohibited. Permittees shall implement an illicit connection/ discharge elimination (ICIDE) program to detect and eliminate the discharge of Bacteria to the MS4, and shall monitor weekly from April 1 - October 31, weeks that contain days with less than 0.1 inch of rainfall (events separated by 3 days of dry weather) for exceedences to the WLAs in-stream at point zero of all publicly owned storm drain pipes and open channels/ drains discharging to Portrero Valley Creek to the Ventura County Line and Las Virgenes Creek to the Ventura County Line.		X
Exhibit H.D.2.(a)(2) - Upon adoption of the Order, the discharge of winter dry weather flows from the MS4 to Malibu Creek and Lagoon is prohibited.		X

Permittees shall implement an illicit connection/ discharge elimination (ICIDE) program to detect and eliminate the discharge of Bacteria to the MS4, and shall monitor weekly from November 1 to March 31, weeks that contain days with less than 0.1 inch of rainfall (events separated by 3 days of dry weather) for exceedences to the WLAs in-stream at point zero of all publicly owned storm drain pipes and open channels/ drains discharging to Portrero Valley Creek to the Ventura County Line and Las Virgenes Creek to the Ventura County Line.		
Exhibit H.D.3.(a)(1) - Upon adoption of the Order, the MS4 Permittees shall develop wet weather toxicity testing and compliance protocol and procedures. This may be accomplished by participating in the Southern California Municipal Storm Water Monitoring Coalition's (SMC) Standardized Toxicity Testing Protocol study. After the completion of the SMC study, the Permittees shall submit a report to the Regional Water Board Executive Officer identifying the testing protocol and compliance criteria, for consideration and approval. The Regional Water Board Executive Officer will approve a toxicity testing protocol and compliance criteria after providing the opportunity for public comment.		X
Exhibit H.D.3.(a)(2) - The MS4 Permittees, thereafter shall conduct toxicity testing for WLA compliance with both acute and chronic criteria for Chlorpyrifos and Diazinon on the first storm event of the wet season that produces at least 0.25 inches of rain, and 2 additional storm events per wet season (events separated by 7 days of dry weather), at the Calleguas Creek mass emission station (ME-CC).		X
Exhibit H.D.4.(a)(1) - Upon adoption of the Order, the MS4 Permittees shall participate in the 2008 Southern California Bight Project (SCBP) to evaluate the distribution and fate of contaminated sediments. Also, the MS4 Permittees shall monitor a minimum of 2 dry weather flow events, 1 dry		X

weather flow event prior to the onset of wet weather- October 1st (during the months of May - June); and monitor 1 dry weather flow event post wet weather- April 15th (during the months of August - September), for OC Pesticides and PCBs exceedences to the TMDL interim WLAs in-sediment at the base of certain Hydrologic Units.		
Exhibit H.E. - The Principal Permittee shall perform Bioassessment monitoring to accomplish the following objectives: • Detect biological responses to pollution. • Detect biological trends in receiving waters. • Assess the biological integrity of receiving waters. • Assess river segments impaired to restore. • Identify probable causes of impairment not detected by physical and chemical water quality measurements.		X
Exhibit H.E.3. - Bioassessment monitoring shall begin the first spring/ fall following adoption of the Order.		X
Exhibit H.F. - The Principal Permittee shall perform the trash and debris study to accomplish the following objectives: • Quantitatively assess the types and amount of trash and debris on the coastal areas and beaches within the County of Ventura. • Identify areas impaired for trash and debris, and to develop control strategies.		X
Exhibit H.G. - The Principal Permittee shall perform a Pyrethroid Insecticides study to accomplish the following objectives: • Evaluate whether creek/ river sediments are toxic to aquatic organisms. • Evaluate whether pyrethroid insecticide concentrations are at or approaching levels known to be toxic to sediment-dwelling aquatic		X

organisms. • Prioritize drainage and sub-drainage areas where control measures need to be implemented if necessary.		
Exhibit H.H. - The Principal Permittee shall conduct or participate in special studies to develop tools to predict and mitigate the adverse impacts of Hydromodification, and to comply with hydromodification control criteria.		X
Exhibit H.I. - The Principal Permittee shall conduct or participate in a special study to assess the effectiveness of low impact development techniques in semi-arid climate regimes such as in Southern California.		X
Exhibit H.J. - The Principal Permittee and Permittees shall participate with other government organizations regulating discharges in southern California in the collaboration to conduct a regional monitoring survey (Southern California Bight Project (SCBP)) anticipated to be held in 2008. The survey's primary objective is to assess the spatial extent and magnitude of ecological disturbances on the mainland continental shelf of the SCB and to describe relative conditions among different regions of the SCBP. The Principal Permittee shall participate on the Steering Committee for the bightwide monitoring project, and complete the estuary and nearshore sampling effort requirement of the proposed monitoring project for Ventura County as defined in the SCBP plan. The Principal Permittee shall be responsible up to a dollar amount of $250,000 for monitoring in the SCBP.		X
Exhibit H.K. - The Principal Permittee and Permittees shall participate in the development and implementation of volunteer monitoring programs in the Ventura watersheds.		X

Building Industry Legal Defense Foundation
Building Industry Association of Greater Los Angeles and Ventura Counties
Major Issues and Comments on the
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Attachment "B"

Selected Costs Associated with Wet Season Grading Prohibitions

Attachment B

The cost of prohibiting grading for six months per year involves assumptions about the cost of land per acre and the projected internal rate of return. For purposes of this calculation, the cost of land per acre includes the direct cost of the land plus all costs related to pre-acquisition, acquisition, entitlement, financing and pre-construction preparation. Internal rate of return varies between 20 and 30 percent and for the example below a rate of 25 percent is used. The formula is:

(Land Value per Acre) x (Internal Rate of Return/Year) x (0.5 Years)

The cost of prohibiting land development for 6 months of the year is shown below:

Land Value	Rate of Carry	Length of Carry	$/acre/6 months
$500,000	25%	0.5 Years	$62,500
$1,000,000	25%	0.5 Years	$125,000

Therefore, the cost of allowing each acre of land to sit idle for six months is extremely expensive on a per acre basis, even if the land valuation was lower than presented here. Using the valuations presented above, avoiding grading a small 10-acre parcel for six months could cost the project proponent between $0.5 million and more than $1 million dollars.

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Attachment "C"

Selected Costs Associated with Advanced Treatment Necessary to Attain Construction Site Numeric Limits Required for Waiver of Wet Season Grading Prohibition

Attachmen. . Advanced Stormwater Treatment--CICWQ Cost Estima.

Coversions/Costs		Runoff vol. (in)	Runoff vol. (in)	Runoff vol. (in)	
27154	Gal/ac-in	1	10	20	
$8,000	Chitosan/M gal	Acres	Gallons	Gallons	Gallons	
$1,250	Labor/M gal-Sm site	1	27,154	271,540	543,080	
$5,000	Labor/M gal-Lg site	10	271,540	2,715,400	5,430,800	
M=	Million gallons	20	543,080	5,430,800	10,861,600	
		100	2,715,400	27,154,000	54,308,000	
		250	6,788,500	67,885,000	135,770,000	
		1	$217	$2,172	$4,345	Chitosan cost
		10	$2,172	$21,723	$43,446	$8000/Mgal
		20	$4,345	$43,446	$86,893	
		100	$21,723	$217,232	$434,464	
		250	$54,308	$543,080	$1,086,160	
		1	$34	$339	$679	Small Site Labor
		10	$339	$3,394	$6,789	
		20	$679	$6,789	$13,577	
		100	$13,577	$135,770	$271,540	Large Site Labor
		250	$33,943	$339,425	$678,850	

Cost Data Sources

Polymer	Clear Creek Systems, 12/2006
Basin	CASQA, 2003
Liner	NRCS, 2006
Inlets	NRCS, 2006
Spillway	NRCS, 2006
Labor	Clear Creek Systems, 12/2006

Water Collection Basin Construction Cost

cubic feet	$0.73	$0.50
3630	$2,650	$1,815
36302	$26,501	$18,151
72604	$53,001	$36,302
363021	$265,006	$181,511
907553	$662,514	$453,777

Project Examples:

10 and 100-acre sites
Capture 1" effective runoff across site
Use advanced treatment system for sediment control
Size basin to contain and treat 1" effective rainfall
Scale up to treat 10-inch and 20-inches of total season rainfall

Basin Construction and Treatment Example (100 Acre Site)

	1-inch	10-inch	20-inch
Basin Construction	$181,511		
Basin Liner	$10,000		
Lined Inlet	$4,400		
Lined Spillway	$4,400		
Polymer Addition (Chitosan)	$21,723	$217,232	$434,464
Labor (handle 1")	$13,577	$135,770	$271,540
Per 100 Acre Site	$235,611	$553,313	$906,315
Per Acre	$2,356	$5,533	$9,063

Basin Construction and Treatment Example (10 Acre Site)

	1-inch	10-inch	20-inch
Basin Construction	$18,151		
Basin Liner	$10,000		
Lined Inlet	$4,400		
Lined Spillway	$4,400		
Polymer Addition (Chitosan)	$2,172	$21,723	$43,446
Labor (handle 1")	$339	$3,394	$6,789
Per 10 Acre Site	$39,463	$62,069	$87,186
Per Acre	$3,946	$6,207	$8,719